CRIMINAL LAW AND PROCEDURE

IN

A NUTSHELL

BY

MARSTON GARSIA, B.A.,

Of Merton College, Oxford, the Middle Temple and the South Eastern Circuit; Barrister-at-Law.

FOURTH EDITION

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The questions are grouped logically under subjects, and references are given to text-books where the answers will be found.

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PREFACE.

THE object of this little book is to state as concisely as possible the present state of the Criminal Law and its Procedure as administered and practised in the Criminal Courts to-day; and I have endeavoured, from my own experience in these Courts, to make the chapters on Procedure as *practical* as possible.

It is hoped that this edition will prove of assistance to students of the Criminal Law as a foundation for the study of a fuller text-book upon the subject, such as Harris's Criminal Law or Archbold's Criminal Pleading, and that it will serve to refresh the memory for examination purposes.

MARSTON GARSIA.

7 KING'S BENCH WALK,
TEMPLE, E.C.4.
October, 1929.

EXPLANATION OF ABBREVIATIONS.

The letters (F.) and (M.) after the names of offences stand for Felony and Misdemeanour respectively.

H.L.	Hard Labour.
Q.S.	Quarter Sessions.
J.P.	Justice of the Peace.
K.B.D.	King's Bench Division.
C.C.R.	Court for the consideration of Crown Cases Reserved.
C.C.C.	Central Criminal Court.
C.C.A.	Court of Criminal Appeal.
P.S.	Penal Servitude.
Imp.	Imprisonment.
C.J.A.	Criminal Justice Act, 1925.
Wilshere	Wilshere's Criminal Cases. 2nd edition.

PART I.

CHAPTER I.

THE NATURE OF A CRIME.

WHAT IS A CRIME?

A Distinction must be drawn between Breaches of Law which are Crimes and those which are merely Illegal without being Criminal.

Various definitions of "CRIME" have been attempted :—

(1) "A violation of the public rights and duties due to the whole community considered as a community" (Blackstone).

(2) "A breach of duty imposed by law for the benefit of the community at large" (Odgers).

Both these definitions are open to the criticism that they limit crimes to the violation of *public* rights or duties, whereas several crimes, *e.g.*, theft, violate *private* rights as well.

(3) A good definition is found in *Mann* v. *Owen* (*a*) :—

"A crime is an act or omission forbidden by law under pain of punishment."

(4) Dr. Kenny enlarges this slightly. He observes that a wrong is civil if any power of remitting its sanction can be exercised (whether freely or even under restraint) by any private person, and therefore defines a crime as "A wrong whose sanction is punitive and is remissible only by the Crown, if remissible at all."

But this is only correct if the expression "the Crown" is held to include every one of H.M. Judges.

(5) The matter may be summarised by saying that the High Court regard as criminal proceedings any proceedings which may terminate in the infliction of a punishment.

(*a*) (1829), 9 B. & C. 599, 602.

Relationship of Crimes to Torts.

(a) It is possible for an offence to be both a tort and a crime, *e.g.*, assault, libel.

(b) If an offence is known to be a crime, one test to ascertain if it is also a tort is to see if it damages any particular individual.

(c) But no such test exists to ascertain if a tort is also a crime.

Differences between Torts and Crimes.

Tort.	Crime.
	(1)
Action.	Indictment or summary procedure.
	(2)
Compensation.	Punishment.
	(3)
Plaintiff can settle or withdraw action at any time.	Can be withdrawn or settled only with the leave of the Court.
	(4)
Civil Court and procedure.	Criminal Court and procedure.
	(5)
Statute of Limitations applies.	Not so (*b*).

OBJECT OF CRIMINAL PUNISHMENT.

Criminal punishment acts upon :—

(1) The body of the offender.

(2) The mind of the offender.

(3) The minds of others.

By (1) it deprives the offender either permanently or temporarily of the power to repeat the offence.

By (2) it strives to prevent him from repeating the offence by the terror it inspires.

By (3) it strives to deter others from committing similar offences.

DIVISIONS OF CRIME.

(A) Indictable Offences (*c*).

Those which admit of trial by jury.

(1) Treason.

(2) Felonies.

(3) Misdemeanours.

(*b*) For exceptions, see *post*, page 11.

(*c*) By section 24 of the *Criminal Justice Act, 1925* (15 & 16 Geo. 5, c. 86).

(B) Petty Offences.

Those which are tried summarily by J.P.s sitting without a jury, and which do not admit of trial by jury.

Differences between Felonies and Misdemeanours (*d*).

Felonies.	Misdemeanours.
(1)	
Involved forfeiture of land or goods or both.	Did not.
(2)	
Originally punishable with death.	Not so.
(3)	
No witnesses for the defence allowed.	Witnesses for the defence always allowed.
The above are obsolete.	
(4)	
Admit of accessories.	Do not.
(5)	
Admit of arrest without a warrant.	Do not.
(6)	
Civil proceedings cannot be taken against an offender before criminal proceedings.	Does not apply.
(7)	
Cannot be tried upon a criminal information (*e*).	Can be so tried.
(8)	
Prisoner has the right of peremptory challenge of the jury (*f*).	Not so.
(9)	
Jury must be sworn separately.	Jury need not be sworn separately.

---

a number of indictable offences, specified in the Second Schedule of the Act, may, if the prisoner consent and the Court think it expedient, be dealt with summarily. But they nevertheless remain "indictable" offences, since they *may* be tried by a jury and *must* be so tried if the prisoner wishes.

(*d*) It is submitted that, at the present day, these differences are purely arbitrary, serve no useful purpose whatsoever, and should therefore be abolished.

(*e*) See page 96.

(*f*) See page 100.

(10)

Different Oath to the Jury.

"I will well and truly try and true deliverance make between our Sovereign Lord the King and the Prisoner at the Bar whom I shall have in charge—	"I will well and truly try the issue (or 'the several issues') joined between our Sovereign Lord the King and the Prisoner at the Bar (*g*)—

and a true verdict give according to the evidence."

(11)

Prisoner must be present.	Prisoner need not be present.

(12)

Before sentence a convicted prisoner is formally asked by the Court whether he has anything to say why the Court should not give him judgment according to law (*h*).	Not so.

(13)

Compensation up to £100 may be ordered to be paid by the felon for any loss of property caused by his felony.	No compensation allowed.

(14)

Involve disqualification for any naval, military or civil office under the Crown, unless pardoned within two months of conviction.	No such disqualification involved.

ESSENTIALS OF A CRIME.

(1) Criminal Act (Actus Reus) or Omission.

(a) VOLUNTARY.
When the act is willed by the actor.

(b) INVOLUNTARY.
When the act is not willed by the actor.

N.B.—An omission can similarly be either (a) or (b).

(*g*) Some text-books state that in the case of a misdemeanour the accused is called "the defendant" and not "the prisoner." The forms of oath given here are the forms administered to juries at the Central Criminal Court.

(*h*) This is called the "Allocutus" and is delivered as follows:—
"Prisoner at the Bar, you stand convicted of felony. Have you anything to say why the Court should not give you judgment according to Law?"

(2) **Criminal Intention (Mens Rea).**

(a) Every crime involves guilty conduct + guilty mind.
(b) Absence of *mens rea* will, as a rule, afford a good defence.

Malice.

(1) Malice in Fact.
The existence of some direct purpose, unlawful or immoral, in committing a crime.

(2) Malice in Law.
The absence of some legal excuse for doing an act *prima facie* unlawful.

ATTEMPT (M) (*i*).

An "attempt" is some physical act which helps in a sufficiently proximate degree towards carrying out a contemplated indictable crime.

(a) A mere intention to commit a crime is not punishable if no steps are taken to carry it into effect.
(b) But an attempt to commit a crime is in itself an offence, and is therefore punishable.
(c) It is punishable to attempt to commit an impossible crime, *e.g.*, to rob an empty pocket.
R. v. *Ring* (*k*).
(d) A person charged with felony or misdemeanour may be found guilty of an attempt to commit the same offence, the same consequences following as if he had been in the first instance charged with the attempt only.
Criminal Procedure Act, 1851 (*l*).
(e) *Punishments.*

(1) Attempt to murder	P.S. Life.
(2) Attempt to commit unnatural offences	P.S. 10 years.
(3) All other attempts	Fine or Imp.

INCITEMENT (M).

(a) To incite or solicit another to commit any crime is in itself a misdemeanour, whether that other consents or refuses to do what he is asked to do.
(b) It is punishable with fine or imprisonment or both.

(*i*) Attempt to murder is a felony (24 & 25 Vict. c. 100, s. 9).
(*k*) (1892), 61 L. J. M. C. 116.
(*l*) 14 & 15 Vict. c. 100, s. 9.

MASTER AND SERVANT.

(a) A master is not usually criminally liable for the acts of his servant, unless he has himself actually authorised them.

(b) This authorisation must have been given either expressly or else by a general authority couched in terms so wide as to imply permission to execute it even criminally.

EXCEPTIONS.

(1) A master is liable for a public nuisance caused by the acts of his servants in the course of their employment, even though such acts are done without his knowledge and contrary to his general orders; for he ought, at his peril, to have seen that his prohibition was obeyed.

R. v. *Stephens* (*m*).

(2) A publican is liable for his servant if he—

(a) Supplies refreshments to a constable on duty (*n*).

(b) Permits gaming on the licensed premises.

Licensing Act, 1910 (*o*).

For if this were not the rule a publican would never be convicted, since he would take care always to be out of the way.

EXEMPTIONS FROM RESPONSIBILITY.

(1) Insanity.

(a) "To establish a defence on the ground of insanity, it must be clearly proved that, at the time of committing the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong."

R. v. *Macnaughton* (*p*).

(b) The law presumes sanity; therefore it is for the defence to prove insanity.

(c) It is for the petty jury to decide whether a case of insanity has been made out; the grand jury have no right to ignore a bill on the ground of insanity.

(d) Criminal proceedings cannot be taken against a man when he becomes *non compos mentis*.

(e) "Uncontrollable impulse" is not a defence in law.

R. v. *Quarmby* (*q*).

R. v. *Kopsch* (*r*).

(*m*) (1866), L. R. 1 Q. B. 702.

(*n*) But not if the servant did not know him to be on duty: *Sherras* v. *De Rutzen*, [1895] 1 Q. B. 918; Wilshere, 11.

(*o*) 10 Edw. 7 & 1 Geo. 5, c. 24, s. 78.

(*p*) (1843), 4 St. Tr. (N.S.) 847; 10 Cl. & F. 200.

(*q*) 15 Cr. App. Rep. 163.

(*r*) 19 Cr. App. Rep. 50.

(2) Infancy.

(a) Under 7 years—Irrebuttable presumption that there is no *mens rea*.

(b) 7-14 years—Presumption that there is no *mens rea*; but it may be rebutted by evidence (*s*).

(c) 14-21 years—Full criminal responsibility. (But persons under 16 cannot be given P.S. or hanged) (*t*).

(3) Drunkenness.

(a) Ordinarily no excuse for the commission of a criminal act, since it is produced voluntarily.

(b) If it be produced by others, it is a good defence.

(c) If the accused is charged with doing an act which is only criminal when done with special intent, the defence may give evidence that he was so drunk as to be incapable of forming such an intent.

R. v. *Meade* (*u*).
R. v. *Beard* (*v*).

(d) If the drunkenness produces such a defect of reason as to amount to insanity, even though temporary, this will be a good defence, just as insanity produced by any other cause is a good defence.

(4) Ignorance.

(a) Ignorance of law will never excuse.

(b) Ignorance of fact will excuse if the mistake was such that had the supposed circumstances been real the action would have been lawful.

R. v. *Rose* (*w*).

(5) Accident.

Must have happened in the performance of a lawful act with due caution.

(6) Compulsion or Duress.

(a) A person who commits a crime not of his own free action but because he is forced by someone else to do so, is excused.

(b) But the compulsion must be physical; mere moral force, *e.g.*, threats, imprisonment, or even assault to the peril of his life, is no excuse.

(*s*) But it is an irrebuttable presumption that a person under 14 cannot commit rape.

(*t*) *Children Act, 1908* (8 Edw. 7, c. 67).

(*u*) [1909] 1 K. B. 895.

(*v*) (1919), 14 Cr. App. Rep. 110; [1920] A. C., at pp. 479, 499, 500.

(*w*) (1884), 15 Cox, 540; Wilshere, 218.

(c) If a married woman be charged with any offence (other than treason or murder), it is a good defence to prove that the offence was committed in the presence of and under the coercion of her husband (*x*).

Criminal Justice Act, 1925 (*y*).

EXCEPTIONAL CASES.

(1) The King.

(a) The King can do no wrong, and therefore is not amenable to the ordinary Criminal Courts of this kingdom.

(b) But if he commands an unlawful act to be done, the person doing it is not indemnified, but is punishable.

(2) Corporations.

(a) Corporations may be indicted by their corporate names for breaches of duty whether wrongful acts (*e.g.*, obstructing highways) or wrongful omissions (*e.g.*, neglecting to repair bridges).

(b) By section 33 of the *Criminal Justice Act, 1925* (*z*) :—

(i) Where a corporation is charged with an indictable offence, the examining justices may make an order empowering the prosecutor to present a bill to the grand jury at assizes (or Q.S.), and this order shall be deemed to be a committal for trial (*a*).

(ii) Where the offence is one which, in the case of an adult, may be dealt with summarily, and the corporation either does not appear by a representative, or, if it does so appear, consents that the offence be dealt with summarily, the justices may so deal with it (*b*).

(*x*) Before June 1, 1926, if a married woman committed a felony (other than murder) in the presence of her husband, she was *presumed* to have acted under his coercion, and was therefore excused from punishment : *R.* v. *Peel* (1922), *The Times*, March 15, p. 7.

(*y*) 15 & 16 Geo. 5, c. 86, s. 47.

(*z*) Before June 1, 1926, an indictment might be preferred against a corporation at assizes or Q.S. and a true bill found, but the corporation could not be tried in either of those Courts. It was necessary for the prosecution to apply for a writ of *certiorari* to remove the indictment into the K.B.D. Now, so far as a corporation can be guilty of crime, it may be brought to trial for its offence, whether punishable summarily or on indictment, in the same manner as an individual offender.

(*a*) C. J. A., s. 33, sub-s. 1. (*b*) C. J. A., s. 33, sub-s. 1 (a).

(iii) Where the offence is one for which an individual has the right to claim to be tried by a jury, if the corporation appears by a representative, it may make a similar claim. If the corporation does not so appear, or no such claim is made, the justices may deal with the case summarily (*c*).

(iv) Where the grand jury at any assizes or Q.S. return a true bill against a corporation, the corporation may, by its representative, enter in writing a plea of guilty or not guilty. If either the corporation does not appear or fails to enter any plea, the Court will order a plea of not guilty to be entered and the trial will proceed as though the corporation had entered this plea (*d*).

(c) But section 33 of the *Criminal Justice Act, 1925*, relates merely to machinery of procedure to avoid the former inconvenience of a corporation not being triable at Assizes (or Q.S.), and does not make any change in the substantive law.

R. v. *Cory Bros. & Co., Ltd.* (*e*).

(d) Therefore an indictment will not lie against a corporation for any felony or misdemeanour involving personal violence.

R. v. *G. N. Ry. Co.* (*f*).

(3) Aliens.

(a) Foreigners who commit crimes in England are punishable as if they were natural-born British subjects.

(b) It is no defence that a foreigner did not know he was doing wrong, the act not being an offence in his own country; but it may serve as a plea in mitigation of sentence.

(4) Ambassadors.

Not amenable to the Criminal Law.

Exceptions :—

(i) Offences affecting the existence and safety of the State.

(ii) Attempt against the life of the Sovereign.

(*c*) C. J. A., s. 33, sub-s. 5.
(*d*) C. J. A., s. 33, sub-s. 3.
(*e*) [1927] 1 K. B. 810.
(*f*) 9 Q. B. 315, *per* Lord Denman, C.J.; affirmed by Finlay, J., in *R.* v. *Cory Bros.* (*supra*).

PRINCIPALS AND ACCESSORIES.

(a) In treason and misdemeanours all persons concerned in any way are principals.

(b) Felonies admit of four classes of offenders :—

(1) Principal in the First Degree (*g*).

The actual offender or offenders.

(2) Principal in the Second Degree (*g*).

One by whom the offender is aided and abetted at the very time when the felony is committed.

(3) Accessory before the fact.

One who procures one or more of the principals to commit the felony.

Alteration in mode—no excuse.

e.g. If A procures B to murder C by shooting him, and B in fact murders C by stabbing him, A is not thereby excused.

Alteration in crime—affords a defence.

e.g. If A procures B to rob C, and B in order to do so kills C, A is not accessory to the homicide.

(4) Accessory after the fact.

One who, knowing felony has been committed, subsequently shelters or relieves one of the felons in such a way as to enable him to evade justice (*h*).

(c) The distinction between "principals" and "accessories before the fact" is not now of much practical importance, since by the *Accessories and Abettors Act, 1861* (*i*), an accessory before the fact to a felony may be indicted, tried, convicted and punished in all respects as though he were a principal felon.

(*g*) The distinction between principals in the first and second degrees is obsolete. Cf. Stephen's Digest of Criminal Law.

(*h*) The maximum punishment for being an accessory after the fact is two years' imprisonment with or without H.L.

(*i*) 24 & 25 Vict. c. 94.

CHAPTER II.

LIMITATIONS ON CRIMINAL JURISDICTION

(A) By Time.

Lapse of time is no bar to a criminal prosecution.

EXCEPTIONS.

(1) Treason or misprision of treason ... 3 years.
(2) Offences against the Riot Act ... ... 1 year.
(3) Carnally knowing a girl between the ages of 13 and 16 ... ... 12 months (*a*).
(4) Illegal drilling ... ... 6 months.
(5) Petty offences ... ... 6 months.

(B) By Territory.

Jurisdiction only exercisable over persons and property within territory.

EXCEPTIONS.

(1) Piracy *jure gentium*.
(2) Homicide.
(3) Bigamy.
(4) Treason and misprision of treason.
(5) Offences committed by Colonial Governors.
(6) Offences against the following Acts :—
  (a) *Foreign Enlistments Act, 1870* (*b*).
  (b) *Official Secrets Acts, 1911, 1920* (*c*).
  (c) *Merchant Shipping Act, 1894* (*d*).

EXTRADITION TREATIES.

Provide that a person who having committed an offence flees abroad shall be arrested and then sent back to take his trial in the country where the offence was committed.

Not applicable to political offenders.

(*a*) 18 & 19 Geo. 5, c. 42.
(*b*) 33 & 34 Vict. c. 90.
(*c*) 1 & 2 Geo. 5, c. 28; 10 & 11 Geo. 5, c. 75.
(*d*) 57 & 58 Vict. c. 60.

Fugitive Offenders Act, 1881 (*e*).
Provides for the surrender of a person who having committed an offence in one part of the King's dominions flees into another part of them.

THE VENUE (*f*) OF CRIMINAL JURISDICTION.

(1) The general rule is that a crime should be tried in the county in which it was committed (*g*).

EXCEPTIONS :—

(i) Offenders against the *Customs Act, 1876* (*h*), may be tried in any county.

(ii) An offence committed during a journey in any carriage or vessel may be tried in any county through which such carriage or vessel passed.

(iii) An offence begun in one county and finished in another, or committed on the boundary of two counties or within 500 yards of such boundary, may be tried in either of those counties.

(2) By the *Criminal Justice Act, 1925* :—

(a) A person charged with any indictable offence may be proceeded against (*i*) in any county (*j*) in which he

(i) was apprehended; or

(ii) is in custody for the offence; or

(iii) has appeared in answer to a summons charging him with the offence,

as if the offence had been committed in that county, and the offence shall be deemed to have been so committed.

(b) If during the preliminary investigation (*k*) it appears to the examining justices that the accused would suffer hardship if he were tried in that county, they shall cease to proceed further in the matter.

(*e*) 44 & 45 Vict. c. 69.

(*f*) The word "venue" means the neighbourhood from which the jurors are to come.

(*g*) Before June 1, 1926, if a person committed an indictable offence in any county, he was *ex necessitate* committed to take his trial at the assizes (or Q.S.) for that county. It can readily be seen that this often entailed great hardship on the prisoner, since he might be kept in custody for three months until the next assizes (or Q.S.) for that county.

(*h*) 39 & 40 Vict. c. 36, s. 258.

(*i*) The expression "proceeded against" means "proceeded against, indicted, tried and punished."

(*j*) The expression "county" means "county or place."

(*k*) See *post*, p. 88.

(c) If the accused applies to the justices to discontinue proceedings on the ground that he will otherwise suffer hardship, and the justices refuse, the accused may inform them that he intends to appeal to the High Court against their decision, and they must then suspend further proceedings, pending the decision of the High Court (*l*).

(d) If a person is charged with two or more indictable offences, he may be proceeded against in respect of them all, in any county in which he could be proceeded against in respect of any one of them, and all the offences shall be deemed to have been committed in that county (*m*).

(e) The justices before whom a person is charged with an indictable offence may, instead of committing him to be tried at the assizes (or Q.S.) for that county, commit him to the assizes (or Q.S.) for any other county, provided that :—

(i) the assizes (or Q.S.) for the county in which the offence was committed are not to be held within one month from the date of committal; and

(ii) The assizes (or Q.S.) to which the justices propose to commit the accused for trial are to be held before that time (*n*).

(*l*) C. J. A., s. 11, sub-s. 1.
(*m*) C. J. A., s. 11, sub-s. 2.
(*n*) C. J. A., s. 14, sub-s. 1.

PART II.

CHAPTER I.

OFFENCES AGAINST THE STATE.

(I) OFFENCES AGAINST THE CROWN AND GOVERNMENT.

(1) TREASON.

Statute of Treasons, 1351 (*a*).

(1) Compassing the death of the King, Queen, or eldest son and heir.
(2) Violating the King's consort, eldest daughter unmarried, or the wife of the eldest son and heir.
(3) Levying war against the King in his realm.
(4) Adhering to the King's enemies in his realm by giving them aid or comfort in the realm or elsewhere.
R. v. *Lynch* (*b*).
R. v. *Casement* (*c*).
(5) Slaying the King's chancellor, treasurer or justices when "doing their offices."

By Statutes of Anne:—

(6) Endeavouring by any overt act to prevent the person entitled under the *Act of Settlement* from succeeding to the Crown (*d*).
(7) Maintaining by writing or printing that any person has any right to the Crown otherwise than by the *Act of Settlement* (*e*).

Rights of a Person Accused of Treason.

(1) Copy of the indictment.
(2) List of witnesses for the Crown; ten days before the trial.

(*a*) 25 Edw. 3, c. 2.
(*b*) [1903] 1 K. B. 444.
(*c*) [1917] 1 K. B. 98; Wilshire, 258.
(*d*) 1 Anne, stat. 2, c. 21, s. 3.
(*e*) 6 Anne, c. 4, s. 1.

(3) List of intended jurors; two days before the trial.
(4) Must be prosecuted within three years unless it was either
  (a) committed abroad;
  (b) a plot to assassinate the King.
(5) Can only be convicted of treason by the testimony of two witnesses either both of them to the same overt act, or one of them to one and the other to another overt act (*f*) of the same treason.

By the Treason Act, 1842 (*g*).

The above rules do not apply where the overt act is the killing of the King or any direct attempt against his person. In such cases the prisoner is indicted and tried as in an ordinary case of murder.

Liability of Aliens.

(a) An alien resident within British territory owes allegiance to the Crown and is therefore liable for treason.
(b) He is still so liable even if an enemy is in military occupation of the territory in which he resides.
De Jager v. *Att.-Gen. of Natal* (*h*).

(2) TREASON FELONY.

Treason Felony Act, 1848 (*i*).

Any deliberate expression by act or word of intention to
(1) Depose the King.
(2) Incite an invasion of the realm.
(3) Intimidate either House of Parliament to induce it to change its policy.

(3) MISPRISION OF TREASON (*k*).

Knowledge and concealment of treason without any assent to it.

(4) BETRAYAL OF OFFICIAL SECRETS (F) or (M).

Official Secrets Act, 1911 (*l*).

(1) To approach any work of defence, arsenal, dockyard, camp, ship, office or any other prohibited place within the Act for any purpose prejudicial to the safety of the State (F).

(*f*) The expression "overt act" means any act manifesting the criminal intention and tending towards the accomplishment of the criminal object.
(*g*) 5 & 6 Vict. c. 51, s. 1.
(*h*) [1907] A. C. 326.
(*i*) 11 & 12 Vict. c. 12.
(*k*) This offence is a high misdemeanour, and is still punishable by forfeiture of goods.
(*l*) 1 & 2 Geo. 5, c. 28.

(2) To make, obtain or communicate to any other person any sketch, plan, model or other document or information which might be useful to an enemy for any purpose prejudicial to the safety of the State (F).

(3) Communication to any unauthorised person of any sketch, etc., relating to any prohibited place by any person to whom it was entrusted in confidence by any Government official (M).

(4) Willingly receiving any such sketch, etc. (M).

Official Secrets Act, 1920 (*m*).

If any person charged with any of the above offences has been in communication with a foreign agent, he shall be deemed to have done so for the purpose of obtaining information prejudicial to the safety of the State.

(5) PRAEMUNIRE (M).

(1) Refusal of a dean and chapter to elect a bishop nominated by the King (*n*).

(2) Unlawfully sending a prisoner outside the realm to evade the writ of *habeas corpus*, contrary to the *Habeas Corpus Act, 1679* (*o*).

(3) Solemnising, assisting, or being present at a marriage which is contrary to the *Royal Marriages Act, 1772* (*p*).

(6) SEDITION (M).

All practices, short of treason, which have for their object—

(1) To excite discontent or dissatisfaction.

(2) To excite ill will between different classes of the King's subjects.

(3) To create public disturbance or lead to a civil war.

(4) To bring into hatred the Sovereign, Government, laws, or Constitution of the realm.

(7) COINAGE OFFENCES (F) or (M).

Coinage Offences Act, 1861 (*q*).

(1) Falsely making or counterfeiting—
  (a) The King's coin (F).
  (b) Foreign gold or silver coin (F).
  (c) Other foreign coin (M).

(2) Colouring coin with intent to make it pass for good (F).

(*m*) 10 & 11 Geo. 5, c. 75.
(*n*) 25 Hen. 8, c. 20.
(*o*) 31 Car. 2, c. 2.
(*p*) 12 Geo. 3, c. 11.
(*q*) 24 & 25 Vict. c. 99.

(3) Impairing gold or silver coin with intent to make it pass for good (F).
(4) Buying and selling counterfeit current coin below its face value (F).
(5) Importing (F) and exporting (M) counterfeit coin.
(6) To make, sell, or possess coining tools without lawful authority (F).
(7) Defacing coin by stamping thereon names or words (M).
(8) Uttering counterfeit coin knowing it to be counterfeit (M).
(9) Being in possession of counterfeit coin (M).
(a) Three or more pieces
(b) knowing them to be counterfeit
(c) with intent to utter them.

(II) OFFENCES AGAINST THE PUBLIC PEACE.

(1) UNLAWFUL ASSEMBLY (M).

Three or more persons who—
(i) Assemble to commit, or when assembled do commit, a breach of the peace.
(ii) Assemble for any purpose in such a manner as to cause reasonable persons to fear a breach of the peace.
(iii) Assemble to commit a crime.

Points to Note.

(a) All persons joining in or encouraging the proceedings are criminally liable (*r*).
R. v. *Atkinson* (*s*).

(b) Mere presence does not constitute "encouragement," but, if unexplained, it may be evidence for the consideration of the jury.
R. v. *Coney* (*t*).

(c) Persons meeting for a lawful purpose in a lawful manner do not constitute an unlawful assembly merely because they may, by so meeting, provoke others to commit a breach of the peace.
Beatty v. *Gillbanks* (*u*).

(d) Persons meeting for a lawful purpose, but in an unlawful manner, constitute an unlawful assembly.
Wise v. *Dunning* (*v*).

(*r*) What constitutes "encouragement" is a question for the jury.
(*s*) 11 Cox, 332.
(*t*) 8 Q. B. D. 552; Wilshere, 66.
(*u*) (1882), 9 Q. B. D. 308; Wilshere, 268.
(*v*) [1902] 1 K. B. 167; Wilshere, 271.

(2) ROUT AND RIOT AT COMMON LAW (M).

(a) The assembly becomes a *rout* as soon as it starts from its place of meeting to carry out the purpose for which it assembled.

(b) It becomes a *riot* as soon as it begins to carry out that purpose with a show of violence.

Five necessary elements of a Riot (*x*).

(1) Number of persons must be three at least.
(2) Common purpose.
(3) Execution or inception of the common purpose.
(4) An intent to help one another by force if necessary against any person who may oppose them in the execution of their common purpose.
(5) Force or violence not merely used in demolishing, but displayed in such a manner as to alarm one person of reasonable firmness and courage.

(3) RIOTOUS ASSEMBLY (F).

Riot Act, 1715 (*y*).

Twelve or more persons who do not disperse within an hour after a J.P. has read to them a proclamation calling upon them to do so.

Points to Note.

(a) It is a misdemeanour for any person to refuse to help to suppress a riot when called upon by a constable or J.P. to do so.

(b) A magistrate is guilty of criminal negligence if he does not use every means in his power to prevent a breach of the peace.

R. v. *Pinney* (*z*).

Difference between Unlawful Assembly and Riotous Assembly.

Unlawful Assembly.	Riotous Assembly.
(1) Three or more persons.	(1) Twelve or more persons.
(2) Misdemeanour.	(2) Felony.
(3) Triable at Quarter Sessions.	(3) Not so.

(*x*) *Field* v. *Receiver of Metropolitan Police*, [1907] 2 K. B. 859.
(*y*) 1 Geo. 1, stat. 2, c. 5.
(*z*) (1832), 5 C. & P. 254.

	(4)
No proclamation need be read.	Proclamation must be read.
	(5)
No stated time for remaining together.	Must remain together for one hour.
	(6)
Common law offence.	Statutory offence.
	(7)
No time limit within which indictment must be preferred.	Indictment must be preferred within twelve months.

(4) FORCIBLE ENTRY AND DETAINER (M).

When a person—

(i) " with a strong hand " or " multitude of people "
(ii) enters upon land occupied by another
(iii) and ejects him or his goods (*a*).

Points to Note.

(a) The person ejected need not be the owner.
(b) An indictment will lie against a landlord who forcibly ejects a tenant whose term has expired.
(c) It is doubtful if it will lie if the person ejected is a trespasser.
(d) It is no defence that the accused has been unjustly turned out of possession, for he has a remedy at common law.

(5) AFFRAY (M).

A fighting

(i) between *two* or more persons,
(ii) in a *public* place (*b*),
(iii) to the terror of His Majesty's subjects.

(6) BLACKMAILING OFFENCES.

(A) Demanding money, etc., with Menaces (F).

Larceny Act, 1916 (*c*).

(I) When a person

(i) utters any letter or writing
(ii) knowing the contents thereof
(iii) demanding with menaces any property or valuable thing
(iv) without reasonable or probable cause.

(*a*) 5 Ric. 2, c. 7; 15 Ric. 2, c. 2; 8 Hen. 6, c. 9.
(*b*) If it occurs in private, it will be an assault.
(*c*) 6 & 7 Geo. 5, c. 50, s. 29.

Points to Note.

(a) The fact that the prisoner makes a *bona fide* but unfounded demand is no defence (*d*).
R. v. *Denyer* (*e*).

(b) The jury decide whether there was reasonable or probable cause; it is not for them to decide whether the prisoner believed he had reasonable or probable cause.
R. v. *Dymond* (*f*).

(II) When a person
(i) utters any letter or writing
(ii) knowing the contents thereof
(iii) threatening to accuse any person of any crime
(iv) with intent to extort any property or valuable thing

(III) When a person
(i) accuses or threatens to accuse any person of any crime
(ii) with intent to extort any property or valuable thing

N.B.—With reference to the above offences it is immaterial whether the prosecutor be innocent or guilty of the offence imputed to him; the gist of the offence of blackmail is the attempted extortion.

(B) Demanding with Intent to Steal (F).
Larceny Act, 1916 (*g*).

This offence consists in demanding from any person, with menaces or by force (whether verbally or by letter), anything capable of being stolen with intent to steal it.

(C) Attempted extortion by threats (M).
Larceny Act, 1916 (*h*).

When a person
(i) with intent to extort any thing from any person
(ii) publishes or threatens to publish any libel upon any other person (alive or dead) *or*
(iii) proposes to abstain from publishing any such libel.

(*d*) The prisoner's *bona fides* may serve as a plea in mitigation of sentence.
(*e*) (1926), 161 L. T. 262.
(*f*) 26 Cox, C. C. 621.
(*g*) 6 & 7 Geo. 5, c. 50, s. 30.
(*h*) 6 & 7 Geo. 5, c. 50, s. 31; and see *post*, p. 26.

(D) Sending threatening Letters (F).

To send, deliver, or cause to be received any letter (knowing the contents thereof) threatening—

(i) To burn or destroy any house, building, agricultural produce, or ship.

(ii) To kill or wound any cattle.

Malicious Damage Act, 1861 (*i*).

(iii) To kill any person.

Offences against the Person Act, 1861 (*k*).

(7) CRIMINAL LIBEL (M).

A malicious defamation made public by writing, printing, signs, or pictures, *and calculated to provoke a breach of the peace.*

(A) Public Libel.

A writing, etc., which tends to injure religion, the Government, or public morals.

(B) Private Libel.

A writing, etc., which tends to blacken the reputation of an individual by bringing him into hatred, ridicule, or contempt.

The Prosecution must Prove

(1) PUBLICATION.

(a) It must be communicated to some person.

(b) Communication to the prosecutor himself is sufficient because it tends to incite him to commit a breach of the peace (*l*).

(c) Communication by the defendant to his wife will not constitute publication.

(d) Communication by the defendant to the prosecutor's wife will constitute publication.

(e) An indictment will not lie for a libel by a husband on his wife nor by a wife on her husband.

(f) Publication need not be malicious.

(g) Authorising such communication constitutes publication.

(*i*) 24 & 25 Vict. c. 97, s. 50.

(*k*) 24 & 25 Vict. c. 100, s. 16.

(*l*) In a *civil* action for libel communication to the plaintiff alone is not sufficient to constitute publication.

(2) That it Refers, and was Intended to Refer, to the Prosecutor.

The words published must be such as reasonably to lead persons with whom he is acquainted to believe that he is the person referred to.

(3) That the Writing, Etc., is Libellous in its Nature.

(a) The imputation need not be made directly or expressly, providing that it is—

(i) Reasonably capable of being conveyed to ordinary persons.

(ii) Actually conveyed to the person to whom it is published.

(b) Words, apparently harmless in their ordinary meaning, may, owing to special circumstances, convey an imputation which would render them libellous.

(c) Words will be construed according to the meaning they would convey to ordinary persons.

(d) If the prosecution wish to allege that certain words bear a special meaning, the facts must be set out in the indictment by means of an *innuendo*.

Defences.

(1) Privilege.

That the publication was on a privileged occasion.

(a) *Absolute Privilege.*

Where the existence of malice is immaterial.

(i) Statements in Parliament.

(ii) Reports published by order of either House.

(iii) Statements made in the course of judicial proceedings.

(iv) Communications in the course of duty by one officer of State to another.

(b) *Qualified Privilege.*

Where malice must be proved to enable the prosecution to succeed.

(i) Statements made under a legal or social duty.

(ii) Fair and accurate reports of—

(a) Parliamentary proceedings.

(b) Judicial proceedings.
(c) Public meetings.
(iii) Statements made in self-defence.

(2) Fair Comment.
That the publication was a fair and *bona fide* criticism upon a matter of public interest.
(i) The jury must consider whether "any fair man, however prejudiced he may be, however exaggerated or obstinate his views, would have said that which this criticism has said."
(ii) Whether the matter is or is not one of public interest is decided by the Judge.

(3) Accident.
That the publication was without his authority or knowledge.

(4) Justification.
(a) By *Lord Campbell's Libel Act, 1843* (*m*).
The prisoner must prove that—
(i) the words complained of are true, and
(ii) the publication of them is for the benefit of the public.
(b) If a prisoner pleads justification, he must justify in writing every part of the alleged libel or his plea will fail.
(c) His written plea is presented to the prosecutor who is entitled to write out a reply in rebuttal.
(d) When the defendant pleads justification, the roles are reversed; he becomes the accuser and must establish the truth of his accusation or be found guilty.
(e) Therefore when justification is pleaded, all that the prosecution have to do is to prove the publication of the alleged defamatory matter and submit that it is defamatory.
(f) If the publication is to the prosecutor alone, he need give in evidence only that the alleged defamatory matter was published to him by the defendant (*n*).
(g) If the publication is to a third party, it is only necessary for that party to give in evidence that the alleged defamatory matter was pub-

(*m*) 6 & 7 Vict. c. 96, s. 6.
(*n*) It is submitted that as truth alone is no defence to a prosecution for criminal libel, it is not even necessary for the prosecution to give in evidence that the alleged libel is untrue.

lished to him by the defendant (*n*) and the prosecutor need not go into the witness-box at all until after the justification has been put before the jury (*o*).

(h) After the prosecution have proved publication by the defendant, it then devolves upon the defendant to prove that the statements alleged to be defamatory are true and were published for the public benefit.

(j) This he may do by giving evidence himself and calling any witnesses he may wish to call.

(k) The prosecution are then at liberty to call the prosecutor, and any other witnesses they may wish, to rebut the evidence of the defendant and his witnesses.

(l) It constantly happens however that when the alleged libel has been published to the prosecutor alone and the prosecutor has gone into the witness-box to prove publication, that the defendant cross-examines him to show justification.

(m) It is submitted that this method of procedure is erroneous, since it reverses the proceedings once again and tries to make the prosecutor meet the alleged justification in advance, *viz.*, before the defendant has attempted to prove it.

(n) The following method of procedure would appear to be the correct one—

(i) Prosecution opens.

Counsel should state only that the defendant has written defamatory statements about the prosecutor to the prosecutor himself (and/or to other persons) and read the statements.

He should not open to the jury any facts which gave rise to the publication of the alleged defamatory statements since that is the duty of the defendant when he justifies.

(ii) Prosecutor (and/or the other persons, if any) gives evidence of publication, *i.e.*, that he has received the statements from the defendant.

(*o*) The reason for this is that what the jury are really trying is whether the alleged libel is true.

(iii) Defendant gives evidence of justification (*i.e.*, that the statements are true) and is cross-examined.

(iv) Prosecutor gives evidence refuting the alleged justification and is cross-examined.

(v) If the defendant has called no witnesses, prosecution sums up and the defendant replies; if the defendant has called witnesses, he sums up and prosecution replies.

Functions of Judge and Jury.

Judge decides—

(1) Meaning.
(2) Privilege.
(3) Malice.

Jury decide—

Whether the document is or is not a libel.
Fox's Libel Act, 1792 (*p*).

Differences between Civil and Criminal Libel.

Civil.	Criminal.
(1)	
Must be published to a third party.	Publication to the prosecutor alone is sufficient.
(2)	
Truth alone a defence.	Truth + public benefit necessary.
(3)	
No libel against a class.	Indictment will lie.
(4)	
No libel against a dead man.	Indictment will lie (if it was published with intention to provoke living persons, *e.g.*, sons).
(5)	
Master liable for all libels published by his servants in the course of their employment.	Master not liable unless the libel was published by his authority or through his negligence (*q*).

(*p*) 32 Geo. 3, c. 60.

(*q*) 6 & 7 Vict. c. 96, s. 7.

(7a) THREATS TO LIBEL (M).

Larceny Act, 1916 (*r*).

To threaten to publish, or promise to abstain from publishing, any libel upon any person with intent to extort anything from that person.

(III) OFFENCES AGAINST PUBLIC JUSTICE.

(1) PERJURY (M).

Perjury Act, 1911 (*s*).

When—

(i) any person lawfully sworn (*t*) as a witness
(ii) in a judicial proceeding
(iii) wilfully makes a statement
(iv) material in that proceeding
(v) which he knows to be false or does not believe to be true (*u*).

If the evidence for the prosecution consist of one witness only, corroboration is necessary either by

(a) A document
(b) Another witness
(c) Some admission by the prisoner
(d) Some other material circumstance.

Otherwise it is merely a case of oath against oath.

(1a) OTHER MISDEMEANOURS WHICH AT COMMON LAW ARE NOT PERJURY BUT WHICH ARE PUNISHABLE UNDER THE PERJURY ACT, 1911.

Similar conduct committed *outside* judicial proceedings.

(1) Wilful use of a false affidavit for purposes of the *Bills of Sale Act, 1878* (*v*).
(2) False statements (sworn or not) with reference to marriages, births, or deaths.
(3) Any false statement in any statutory declaration or other document which is required to be made by Act of Parliament.
(4) Any false statement in order to procure registration as a person qualified by law to practise any vocation.

(*r*) 6 & 7 Geo. 5, c. 50; and see *ante*, p. 20.
(*s*) 1 & 2 Geo. 5, c. 6.
(*t*) By the *Perjury Act, 1911*, the expression "oath" includes "affirmation" and "declaration," and the expression "swear" includes "affirm" and "declare."
(*u*) The prisoner can be convicted of perjury if he wilfully spoke words he believed to be false, even though they turn out to be true.
(*v*) 41 & 42 Vict. c. 31.

(1b) SUBORNATION OF PERJURY (M).

To procure another person to commit perjury and the perjury is committed.

(2) COMPOUNDING OFFENCES.

Compounding = Forbearing to prosecute an offender on account of some reward received.

(1) Compounding a Felony (M).

When a person—

(i) knowing that a felony has been committed,
(ii) agrees to abstain from prosecuting,
(iii) in consideration of a reward.

THEFT BOTE.

Forbearing to prosecute a thief in consideration of receiving one's stolen goods back again.

(2) Compounding a Misdemeanour.

Not a criminal offence, unless done under circumstances amounting to a conspiracy to defeat the ends of justice.

(3) Misprision of Felony (M).

Knowledge and concealment of some felony (other than treason) committed by another, without any assent to it.

Assent would render the offender liable either as a principal or as an accessory.

(3) BRIBERY (M).

(1) Where some public official is approached by one bringing him a reward in order to influence his conduct in his office.

(2) Bribery to secure a place or appointment :—

(a) Where the place or appointment is in the gift of some public officer.

(b) Where it is determined by public election, either parliamentary or municipal.

(3) Where a reward is corruptly paid to an agent of another to induce such agent to do some act in breach of his duty.

(4) EMBRACERY (M) (*x*).

(i) Attempting by any corrupt means to influence jurors to give a verdict in favour of one side.

(ii) Attempting to induce witnesses to alter evidence already given, or to give certain evidence or not to give evidence at all.

(5) BARRATRY (M).

Habitually inciting law suits between His Majesty's subjects.

(6) MAINTENANCE (M).

Intermeddling in a civil suit, in which one has no interest, by assisting either plaintiff or defendant with money or otherwise to the disturbance of common right and from other than charitable motives.

(7) CHAMPERTY (M).

Paying the expenses of one of the parties in a civil suit to recover property on the condition of receiving a share of that property in the event of that party being successful.

(8) CRIMINAL CONTEMPT OF COURT (M).

(i) Some contempt in face of the Court, *e.g.*, disobedience to the orders of the Court.

(ii) The publication of scandalous matter of the Court itself.

(iii) Any act or writing calculated to obstruct the course of justice, or interfere with the process of the Courts.
EXAMPLES.
(1) The publication of comments relating to a pending case calculated to prejudice its fair trial.
(2) An agreement to indemnify bail.

(IV) OFFENCES AGAINST INTERNATIONAL LAW.

(1) VIOLATION OF RIGHTS OF FOREIGN AMBASSADORS (M).

(a) An ambassador is not amenable to the criminal law of the country to which he is sent.

(b) Not even judicial civil process may be executed against him.

(*x*) An embracery may also be a contempt of Court.

(c) He is, however, punishable by the State for a direct attempt against the life of its Sovereign.

(2) ACTS OF PIRACY (F).

(1) Piracy at Common Law.

Any act of robbery committed
(i) upon the high seas,
(ii) within the jurisdiction of the Admiralty (*y*).

(2) Piracy by Statute.

(i) Any commission of hostilities against a British subject at sea by any other British subject under the commission of a foreign Power (*z*).
(ii) Any part taken by British subjects in the slave trade (*a*).

(3) VIOLATIONS OF NEUTRALITY (M).

The Foreign Enlistments Act, 1870 (*b*).

(1) Illegal Enlistment.

(a) British Subjects.

(i) May not accept any commission or engagement in the service of any foreign State at war with a friendly State.
(ii) May not leave or attempt to leave the King's dominions with intent to accept any such commission.

} Without a licence from the Crown.

(b) Any Person.

May not induce anyone to—
(i) Accept any such commission.
(ii) Leave the King's dominions with any such intent.

(2) Illegal Shipbuilding, etc.

(i) To build, equip, or despatch any ship to be employed in the service of a foreign State at war with a friendly State.
(ii) To prepare or fit out any naval or military expedition against any friendly State.

} Without a licence from the Crown.

N.B.—All ships, arms, and equipments thus used are forfeit to the King.

(*y*) As to what is the "jurisdiction of the Admiralty," see the *Territorial Waters Jurisdiction Act, 1878* (41 & 42 Vict. c. 73).
(*z*) 11 & 12 Will. 3, c. 7, s. 7, made perpetual by 6 Geo. 1, c. 19.
(*a*) 5 Geo. 4, c. 113, s. 9. (*b*) 33 & 34 Vict. c. 90.

(V) OFFENCES OF VAGRANCY (*c*).

The Vagrancy Acts, 1824 (*d*) *and 1898* (*e*).

(1) Idle and Disorderly Persons.

(a) Wilfully neglecting to work, and thus causing a burden on the parish.
(b) Hawking goods without a licence.
(c) Begging (or encouraging a child to do so).
(d) Fraudulently applying for parish relief.

(2) Rogues and Vagabonds.

(a) Second conviction as idle and disorderly.
(b) Resisting arrest for any charge in (1) (providing he be convicted).
(c) Leaving wife and children a burden on the parish.
(d) Procuring alms by exposing deformities.
(e) Being found in a building or enclosed premises for an unlawful purpose.
(f) Fortune telling.
(g) Gaming in a public place.
(h) Wandering about without visible means of subsistence, and not being able to give a good account of oneself.
(j) Publicly exposing obscene prints, etc.
(k) Publicly exposing one's person.
(l) Suspected or reputed thieves loitering in a public place with intent to commit a felony.
Prevention of Crimes Act, 1871 (*f*).
(m) A criminal alien who disobeys an order for his expulsion.
Aliens Act, 1905 (*g*).
(n) Male person living on the earnings of prostitution.
Criminal Law Amendment Act, 1912 (*h*).
This offender cannot on a second conviction be dealt with as an incorrigible rogue; but for any conviction he may be sentenced to imprisonment for two years with hard labour, and in the case of a second conviction a whipping may be added.

(3) Incorrigible Rogues.

(a) Second conviction as a rogue and vagabond.
(b) Resisting arrest for any charge in (2) (providing he be convicted).

(*c*) These are petty offences.
(*d*) 5 Geo. 4, c. 83.
(*e*) 61 & 62 Vict. c. 39.
(*f*) 34 & 35 Vict. c. 112, s. 7.
(*g*) 5 Edw. 7, c. 13.
(*h*) 2 & 3 Geo. 5, c. 20, s. 7.

Petty sessions can only commit to imprisonment with H.L. until next quarter sessions. Q.S. will then receive the conviction, and without further evidence pass sentence, which may extend to one more year's H.L. and (if the prisoner be a male) a whipping.

(VI) CONSPIRACY (M).

An unlawful agreement by two or more persons to carry out an unlawful common purpose or a lawful common purpose by unlawful means.

THE AGREEMENT.

(a) The bare agreement is the crime.
(b) An overt act is not necessary.

THE PERSONS.

(a) Two at least; therefore husband and wife cannot be guilty of conspiracy.
(b) If one of two conspirators be acquitted, the other must be discharged, even if he has pleaded guilty (*i*).
(c) The acts and statements of any one conspirator are evidence against the rest.

THE PURPOSE.

(a) It is sufficient if the acts agreed to be done, although not criminal, are wrongful.
(b) The purpose may therefore be—
  (i) Crime.
  (ii) Tort.
  (iii) Breach of contract.
  (iv) Acts outrageously immoral or injurious to the public.

(VII) BIGAMY (F).

When a person
(i) who has been previously married, and
(ii) has not since been legally divorced,
(iii) goes through a legally recognised ceremony of marriage with another person,
(iv) whilst the original spouse is still alive,
(v) unless the original spouse has been continuously absent for seven years, and has not been known by the accused to be living.

PREVIOUSLY MARRIED.

(1) The first marriage must have been valid.

(*i*) Except when the other conspirators either are dead or cannot be found.

(a) Must be between persons who are marriageable by the law of their domicile.
(b) Must be validly celebrated according to the law of the country where it takes place.

(2) It is no defence that the second marriage would in any case have been void, *e.g.*, for consanguinity (*k*).

(3) If the first marriage was void, the second will not be bigamous.

(4) An honest and reasonable error as to a question of fact (*e.g.*, that the spouse is dead) may afford a defence; but an error as to a point of law (*e.g.*, that the first marriage was invalid or that the prisoner was divorced) will not (*l*).

R. v. *Wheat* (*m*).

NOT DIVORCED.

(1) Decree *nisi* not enough.

(2) The divorce must be legal in the country where the parties were domiciled at the time.

(3) It is not sufficient to go to a country for the special purpose of obtaining a divorce by its laws.

R. v. *Lolley* (*n*).

LEGALLY RECOGNISED CEREMONY.

It does not matter in what country the second marriage takes place, providing it is valid according to the law of that country.

ORIGINAL SPOUSE STILL ALIVE.

(1) Burden of proof is on the prosecution.

(2) An honest and reasonable belief that the spouse is dead will afford a good defence.

R. v. *Tolson* (*o*).

ABSENT FOR SEVEN YEARS.

(1) Continuous absence of the spouse for seven years affords a presumption that such spouse is dead.

(2) Where such absence is proved, it is for the prosecution to show that the prisoner knew that his wife was alive.

(3) Failing such proof, he is entitled to be acquitted.

(*k*) Since 1907 marriage with a deceased wife's sister is legal. Since 1921 marriage with a deceased husband's brother is also legal. Marriage with a brother's divorced wife is, however, illegal.

(*l*) But it may serve as a plea in mitigation of sentence.

(*m*) [1921] 2 K. B. 119.

(*n*) (1812), 2 C. & F. 568.

(*o*) (1889), 23 Q. B. D. 168; Wilshere, 18.

CHAPTER II.

OFFENCES AGAINST THE PERSON.

(I) MURDER (F).

"Unlawfully killing a reasonable creature in being and under the King's peace with malice aforethought express or implied, the death following within a year and a day" (*a*).

UNLAWFULLY.

Without justification or excuse.

KILLING.

(1) Direct violence is not necessary.

(2) An act may amount to killing, even though it would not have produced death but for the acts or omissions of third parties, though it may be too remote if such acts or omissions were unconscionably negligent.

Governor Wall's Case (*b*).

(3) Killing by perjury is not murder.

R. v. *Macdaniel* (*c*).

(4) No person can be convicted of murder or manslaughter on circumstantial evidence alone, unless the body of the deceased has been found.

A REASONABLE CREATURE.

A human being.

IN BEING.

(1) Killing a child in its mother's womb is not murder.

(2) If the child be born alive, and die from wounds or drugs received in the womb, the child is considered to have been murdered.

UNDER THE KING'S PEACE.

(1) Excludes only alien enemies actually engaged in war.

(2) Homicide committed upon a foreigner abroad by a British subject is punishable in our Courts.

Offences against the Person Act, 1861 (*d*).

(*a*) 3 Coke Inst. 47.
(*b*) (1802), 28 S. T. 51.
(*c*) (1756), 19 S. T. 745, 810-4.
(*d*) 24 & 25 Vict. c. 100, s. 9.

MALICE AFORETHOUGHT.

The distinctive attribute of murder.
Killing without malice = manslaughter.

Six Forms:—

(1) Intent to kill the particular person who was killed.

(2) Intent to kill a particular person, but not the one who was killed.
e.g., A shoots at B intending to kill him, but misses B and kills C.

(3) Intent to kill without selecting any particular person, *i.e.*, universal malice.
e.g., A places an explosive machine in the House of Lords intending to destroy everyone in it because he disapproves of an hereditary second chamber.

(4) Intent only to hurt, but by means of an act likely to kill.
e.g., a blacksmith, wishing to chastise his apprentice, hits him on the head with a bar of iron and causes his death.

(5) Intent to do an act likely to kill without any purpose of causing hurt.
e.g., A with intent to defraud the insurance company sets fire to his house, which he has insured for more than its value, and his son, who, unknown to A, was in the house, perishes in the flames (*e*).

(6) Intent to do a felonious act even though unlikely to kill (*f*).
e.g., A shoots at one of B's pheasants, intending to steal it; he misses the pheasant and kills B, who happens to be standing near (*g*).

A YEAR AND A DAY.

If the death occurs after this time, the law will presume that it was due to some other cause than the act.
R. v. *Dyson* (*h*).

(*e*) *R.* v. *Serne* (1887), 16 Cox, 311.

(*f*) There is considerable doubt about this. The opinion to-day is that for the homicide to amount to murder the felony must be one which is known to be dangerous to life or likely in itself to cause death. See *post*, p. 43, "Abortion."

(*g*) If A had shot at a sparrow with the same result, the homicide would only have been manslaughter, as the act intended would not have been a felonious one.

(*h*) [1908] 2 K. B. 454; Wilshere, 216.

DEFENCES TO A CHARGE OF MURDER.

I. Complete Innocence.

That the prisoner did not commit the homicide.

II. Manslaughter.

That the prisoner did commit the homicide, but that the circumstances were such as to reduce it to manslaughter (*i*).

III. Justifiable Homicide.

That the prisoner did commit the homicide, but that the circumstances were such that no guilt attached to him.

(1) In the Execution of Public Justice.
E.g., hangman carrying out an execution.

(2) In the Advancement of Public Justice.
Examples:—

(i) A constable who in making a lawful arrest in the execution of his duty kills the man who is resisting arrest, provided he used no more force than was necessary.

(ii) A warder who in endeavouring to prevent a convict from escaping kills him.

(iii) An officer who in endeavouring to disperse a riotous mob kills one or more of them, not being able by any other means to suppress the riot (*j*).

(3) To Defend Oneself Against a Wrongdoer.

(a) A man is justified in using against an assailant a proportionate amount of force in defence of himself.

(b) Therefore, if a man be attacked by an assailant in such a manner as to cause him reasonable fear of danger, he is justified in adopting proportionate means to ward it off; and if, having retreated as far as he can, until he has no means left of escaping from the attack, he turns upon his assailant and kills him in order to avoid destruction, he will not be guilty.

(c) Where the assailant is not attacking a human being, but is interfering unlawfully with property, the possessor of that property is allowed to use proportionate force to repel the attack, but is not, as a rule, justified in killing the trespasser.

(*i*) See *post*, p. 38.
(*j*) Justifiable both at common law and by the *Riot Act, 1715* (1 Geo. 1, stat. 2, c. 5).

(d) But in defence of a man's house, the owner may kill a trespasser who would forcibly dispossess him of it in the same manner as he might by law kill in self-defence a man who attacked him personally, with this distinction, that in defending his house, he need not retreat, as in other cases of self-defence, for that would be giving up his house to his adversary (*k*).

R. v. *Hussey* (*l*).

(4) To Prevent Someone from Committing a Forcible and Atrocious Felony.

But only if :—

(i) There were no other means.

(ii) There were other means, but they had been resorted to and had failed.

R. v. *Rose* (*m*).

IV. Excusable Homicide (*n*).

That the prisoner did commit the homicide, but that the circumstances were such as to amount to misadventure.

Death by misadventure occurs when a person

(i) in doing a lawful act

(ii) with due care

(iii) and with no intention of doing any harm

(iv) causes the death of another.

This may happen in one of several ways.

(1) Pure Accident.

E.g., a man is at work with a hatchet, the head of which flies off by accident and kills a bystander.

(2) Honest and Reasonable Mistake.

Provided that had the facts been as the prisoner believed, the act would have been lawful.

R. v. *Rose* (*m*).

(3) Surgical Operation.

(a) Patient's consent.

(b) Due care on the part of the surgeon.

(4) Whilst Engaged in Sport.

But the sport must be a lawful one, *e.g.*, football.

R. v. *Bradshaw* (*o*).

R. v. *Moore* (*p*).

(*k*) 1 Hale, 485, 486.

(*l*) (1924), 18 Cr. App. Rep. 160.

(*m*) (1884), 15 Cox, 540; Wilshere, 218.

(*n*) The distinction between justifiable and excusable homicide is no longer of any practical importance.

(*o*) 14 Cox, 83.

(*p*) 14 T. L. R. 229.

Prize fighting is illegal:—
on the grounds that no one has any right to consent to
(a) infliction of excessive bodily harm,
(b) a state of affairs causing a breach of the peace.

(5) CHANCE MEDLEY.
When a man kills another
(i) upon a sudden affray
(ii) in defence of himself, his wife or child
(iii) with no vindictive feeling,
(iv) having endeavoured to avoid any struggle until no other possible means of escaping remained.

(I.a) SUICIDE OR SELF-MURDER (F) (*q*).

Suicide is a felony if
(i) the act be committed deliberately
(ii) by one who
(a) has arrived at years of discretion;
(b) is in his right mind.

(I.b) SUICIDE PACTS (F).

(1) If one person persuades another to kill himself and he does so, the adviser is guilty of murder.
(2) If two persons agree to commit suicide together and attempt to do so and only one dies, the survivor is guilty of murder.

R. v. *Alison* (*r*).

(I.c) ATTEMPTED SUICIDE (M).

This is not an attempt to commit *murder* within the *Offences against the Person Act, 1861* (*s*).

(I.d) ATTEMPTS TO MURDER (F).

Offences against the Person Act, 1861 (*s*).

(1) Administering poison, wounding or causing grievous bodily harm with intent to murder.
(2) Attempting to poison, drown, suffocate or strangle, or shooting or attempting to discharge loaded firearms with like intent, whether any bodily injury be caused or not.
(3) Destroying or damaging any building with any explosive substance with like intent.

(*q*) This offence is technically called *felonia de se* and the offender a *felo de se.*
(*r*) 8 C. & P. 418; upheld by the C.C.A. in *R.* v. *Leach* (1926).
(*s*) 24 & 25 Vict. c. 100, ss. 11-15.

(4) Setting fire to any vessel or its belongings or casting away or destroying any vessel with like intent.
(5) Attempting to murder by any other means.

(II) MANSLAUGHTER (F).

(1) Intentional.

Committed upon a sudden heat caused by grave provocation given by the deceased.

Points to Note.

(a) The provocation must have immediately preceded the homicide.
(b) There must have been no interval for "cooling" (*t*), otherwise the homicide will be regarded as a deliberate act of revenge.
(c) The provocation must not have been sought for or induced by the slayer.

Effect of Immediate Provocation.

(a) Grave provocation reduces killing to manslaughter.
(b) Slight provocation reduces killing with a slight instrument to manslaughter.
(c) Slight provocation leaves killing with a dangerous instrument still murder.

(2) Unintentional.

This may happen in one of three ways :—

(1) By doing a criminal act.
The act must be the *direct cause* of death, but death need not be caused by *direct violence*.
R. v. *Towers* (*u*).

(2) By omitting to do some act which should legally be done.
R. v. *Instan* (*v*).

(3) By doing some act which is quite lawful, but with wicked negligence and therefore unlawfully.
R. v. *Franklin* (*x*).

(II.a) INFANTICIDE (F).

Where a woman by a wilful act (or omission) causes the death of her newly-born child, but at the time of the act the balance of her mind was disturbed owing to her not having recovered from

(*t*) See the remarks of Erle, C.J., in *R.* v. *Eagle* (1862), 2 F. & F., at p. 830.
(*u*) (1874), 12 Cox, 530.
(*v*) [1893] 1 Q. B. 450; Wilshere, 235.
(*x*) (1883), 15 Cox, 163.

the effect of giving birth to her child, she shall be guilty, not of murder, but of infanticide, and shall be dealt with as in a case of manslaughter.

Infanticide Act, 1922 (*y*).

(III) ASSAULTS.

Offences against the Person Act, 1861 (*z*).

Assault.

An unlawful attempt to offer with violence to do a corporal hurt to another.

Battery.

An injury done to a person in an angry, rude, insolent, or revengeful manner.

Every Battery includes an Assault.

THREE ESSENTIALS TO AN ASSAULT.

(1) Movement (words not enough).
(2) Alarm.
(3) Force.

FORCE MAY BE LEGALLY JUSTIFIABLE.

(1) Furtherance of public authority.
(2) Correcting children.
(3) Self-defence.
(4) By consent of the person assaulted, but such consent
  (a) must be free;
  (b) must not be obtained by fraud;
  (c) is no defence to a breach of the peace.

CLASSIFICATION OF ASSAULTS.

(A) WOUNDING.

To constitute a *wound*, the skin must be broken; a mere abrasion is not sufficient.

I. Felonious Wounding (F).

(1) WOUNDING WITH INTENT TO MURDER.
(2) WOUNDING WITH INTENT TO MAIM, DISABLE OR CAUSE GRIEVOUS BODILY HARM.
  (a) To *Maim* is to injure a man in any manner which renders him less capable of fighting.
  (b) To *Disable* is to cause a permanent injury.
  (c) To constitute *Grievous bodily harm* the injury need not be permanent or dangerous provided it is such as to interfere seriously with health or comfort.

(*y*) 12 & 13 Geo. 5, c. 18, s. 1. (*z*) 24 & 25 Vict. c. 100.

(d) In order to convict of Felonious Wounding, the prosecution must prove "Intent" on the part of the prisoner; *i.e.*, that he was actuated by spite or ill-feeling against the prosecutor.

II. Unlawful Wounding (M).

(a) The prosecution must show that the wounding was malicious.

(b) But with regard to "Intent," it is not necessary to prove that the prisoner had any spite or ill-feeling against the prosecutor.

(B) ASSAULTS.

I. Assault Occasioning Actual Bodily Harm (M).

(a) *Actual bodily harm* includes any hurt or injury calculated to interfere with the health or comfort of the prosecutor.

(b) It need not be an injury of a permanent character.

(c) Nor need it amount to what would be considered *Grievous bodily harm* (*a*).

II. Common Assault (M) (*b*).

Any attempt to offer with violence to do a corporal hurt to another which does not amount to wounding or to assault occasioning actual bodily harm.

Alternative Convictions.

A prisoner indicted for :—	may be convicted of :—
Wounding with intent to murder	(1) Wounding with intent to cause grievous bodily harm (2) Unlawful wounding
Wounding with intent to cause grievous bodily harm	Unlawful wounding
Unlawful wounding	(1) Assault occasioning actual bodily harm (2) Common assault
Assault occasioning actual bodily harm	Common assault

(*a*) It would seem that in distinguishing *grievous* from *actual* bodily harm the only difference is the use of the word "seriously."

(*b*) Common assaults are often disposed of summarily by magistrates at Petty Sessions.

III. Other Assaults.

(1) Maliciously poisoning so as to endanger life or cause grievous bodily harm (F).
(2) Maliciously poisoning so as to annoy (M).
(3) Assault with intent to commit a felony (M).
(4) Assault to prevent the lawful apprehension either of the assailant himself or of any other person (M).
(5) Assault upon a constable in the execution of his duty or upon a person helping him (M).
(6) Assault with intent to rob (F) (*c*).
(7) Assaults upon servants (M).
When anyone legally liable as a master
(i) refuses or neglects to provide for a servant necessary food, clothing or lodging.
(ii) unlawfully and maliciously does to a servant any bodily harm likely to endanger his life or permanently injure his health.
(8) Assaults under the *Lunacy Act, 1890* (*d*) (M).
When anyone employed in an institution for lunatics or who has charge of a lunatic wilfully neglects or ill-treats a patient.
(9) Assaults upon children (M).
(i) Wilfully assaulting, neglecting, abandoning or exposing a child (*e*) in a manner likely to cause it unnecessary suffering or injury to its health.
(ii) If a parent or other person legally liable to maintain a child fails to provide it with adequate food, clothing, medical aid or lodging.
(iii) On an indictment for manslaughter of a child of which he had the custody, the prisoner may be convicted of cruelty.
(iv) Where a person having the custody of a child has been convicted of cruelty, the Court may take the child out of his custody and commit it to the custody of some fit person till it reaches the age of 16, compelling the former guardian to contribute towards its maintenance.

Children Act, 1908 (*f*).

(v) If a person having the custody of a girl under 16 causes or encourages her seduction or prostitution.

(*c*) *Larceny Act, 1916* (6 & 7 Geo. 5, c. 50), s. 23, sub-s. 3. On an indictment charging the prisoner only with assault with intent to rob, the prisoner cannot be convicted of common assault: *R.* v. *Woodhall*, 12 Cox, 240.
(*d*) 53 Vict. c. 5.
(*e*) "Child"=up to 14, "Young person"=14-16; the word "child" is here used to mean "child or young person."
(*f*) 8 Edw. 7, c. 67.

(vi) Undertaking the nursing and maintenance of infants under 7 apart from their parents without complying with the provisions of the Act as to notices to the local authorities, etc.

(vii) If any person who has the custody of a child allows it to be in the streets for the purpose of begging, whether or not the child is singing, performing or offering anything for sale.

(viii) It is forbidden to cause any male child under 16 or female under 18 to take part in any public performance whereby its life or limbs may be endangered.

Children's Dangerous Performances Acts, 1879-1897 (*g*).

(ix) It is forbidden to allow or procure any child to go out of the United Kingdom for playing or performing for profit; unless in the case of a young person to whom a licence under the Act has been granted.

Children (*Employment Abroad*) *Act, 1913* (*h*).

(IV) SEXUAL OFFENCES (F) OR (M).

(1) RAPE (F).

Having carnal knowledge of a woman against her will by force, fear or fraud.

Criminal Law Amendment Act, 1885 (*i*).

(2) CARNAL KNOWLEDGE OF A GIRL UNDER 13 (F).

Girl's consent is no defence.

(3) CARNAL KNOWLEDGE OF A GIRL BETWEEN 13 AND 16 (M).

(a) The prosecution must be brought within 12 months of the commission of the offence.

Criminal Law Amendment Act, 1928 (*j*).

(b) The girl's consent is no defence.

(c) Reasonable cause to believe that the girl was over 16 is no defence unless the prisoner

(i) is a man not over 23 years of age; and

(ii) has not been previously charged with this offence (*k*).

Criminal Law Amendment Act, 1922 (*l*).

(*g*) 42 & 43 Vict. c. 34, amended by 60 & 61 Vict. c. 52.

(*h*) 3 & 4 Geo. 5, c. 7.

(*i*) 48 & 49 Vict. c. 69.

(*j*) 18 & 19 Geo. 5, c. 42.

(*k*) This gives rise to a curious situation. A man under 23 who has been previously acquitted on such a charge, and who had reasonable cause to believe the girl was over 16, cannot set up this defence; but a man of like age who has ravished girls several times, and has escaped detection, can set it up.

(*l*) 12 & 13 Geo. 5, c. 56, s. 2.

(d) If this defence be set up, and the indictment contain a count for indecent assault in addition to the count for carnal knowledge, then, since the prosecutrix, being under 16, cannot consent, the prisoner automatically pleads guilty to the count for indecent assault (*m*).

(4) INDECENT ASSAULT UPON A GIRL UNDER 13 (M).

(5) INDECENT ASSAULT UPON ANY FEMALE (M).

In the case of a girl under 16, consent is no defence.

(6) ATTEMPT (*n*) TO PROCURE ABORTION (F).

(a) This offence consists of unlawfully administering any drug or unlawfully using any instrument with intent to procure the miscarriage of a woman.

Offences against the Person Act, 1861 (*o*).

(b) Three classes of persons may be guilty of crime under this heading :—

(i) The Woman Herself.

If a woman, *being with child*, attempts to procure her own miscarriage.

(ii) Any Person Assisting.

If any person attempts to procure the miscarriage of a woman, *whether she be or be not with child.*

(iii) Any Person who Supplies the Drug or Instrument.

If any person procures or supplies any drug or instrument knowing that it is intended to be used *unlawfully* for the purpose of attempting to procure the miscarriage of a woman whether she be or be not with child.

(*m*) But the C.C.A. disapproves of the defence open under section 2 of 12 & 13 Geo. 5, c. 56, to a charge of carnal knowledge not being open to a charge of indecent assault : *R.* v. *Laws*, 21 Cr. App. Rep. 45.

(*n*) This is not an " attempt " in the sense in which the word is used on page 5; the full title of this offence is " unlawfully administering any drug or using any instrument with intent to procure the miscarriage of a woman."

(*o*) 24 & 25 Vict. c. 100.

(c) A woman who is not with child and who attempts to procure her own miscarriage may, if the evidence warrant it, be convicted of conspiring with other persons to procure her own miscarriage.

(d) If a woman dies in consequence of an operation performed by another person unlawfully and with intent to procure her miscarriage, that person may be indicted for murder.

(e) But in order for him to be guilty of murder, it must be shown that as a reasonable man he must have contemplated that death or grievous bodily harm was likely to result from the operation; otherwise he will be guilty only of manslaughter.

R. v. *Lumley* (*p*).

(7) INCEST (M).

Incest Act, 1908 (*q*).

(1) For a male person to have carnal knowledge of his grand-daughter, daughter, sister or mother (knowing her to be such).

(2) For a female person to permit her grandfather, father, brother or son (knowing him to be such) to have carnal knowledge of her.

In neither case is consent a defence.

(3) To commence a prosecution for incest the sanction is required of either the Attorney-General or the Director of Public Prosecutions.

(8) CONCEALMENT OF BIRTH (M).

Does not matter whether or not

(a) the child was born alive;

(b) the person who concealed the birth was the mother.

(9) ABDUCTION (F) OR (M).

When any man

(i) takes or lures away a woman

(ii) against her will, *or*

(iii) out of the possession and against the will of her parent or lawful guardian (if she be under 21)

(iv) with intent to marry her or carnally know her himself, *or*

(v) that she be married or carnally known by another man.

(*p*) 22 Cox, 635. (*q*) 8 Edw. 7, c. 45.

Four kinds—

(1) Of a woman on account of her fortune (F).
(2) By force with intent to marry (F).
(3) Of an unmarried girl under 18 with intent to have carnal knowledge (M).
(4) Of a girl under 16 (M).

CHAPTER III.

OFFENCES AGAINST PROPERTY.

(I) LARCENY (F).

Larceny Act, 1916 (a).

(1) SIMPLE LARCENY.

A person steals who
(i) without the consent of the owner
(ii) fraudulently and without a claim of right made in good faith
(iii) takes
(iv) and carries away
(v) anything capable of being stolen
(vi) with intent at the time of such taking to deprive the owner permanently thereof.

OWNER'S CONSENT.
(a) Consent obtained by intimidation or fraud is no consent.
(b) Fraud may be either Active or Passive (*b*).

CLAIM OF RIGHT.
(a) The offence must be committed without even the appearance of legal right.
(b) The best evidence of a sincere claim is that the property was taken openly.

TAKING.
(a) The expression "takes" includes obtaining possession
(i) by any trick (*c*);
(ii) by intimidation (*d*);
(iii) by finding (*e*);
(iv) under a mistake on the part of the owner (*f*).

(*a*) 6 & 7 Geo. 5, c. 50.
(*b*) For cases of passive fraud see *R.* v. *Middleton* (1873), L. R. 2 C. C. R. 38; Wilshere, 96; and *R.* v. *Ashwell* (1875), 16 Q. B. D. 190.
(*c*) See *post*, page 48.
(*d*) See *post*, page 48.
(*e*) See *post*, page 48.
(*f*) See *post*, page 49.

(b) The thief must unlawfully assume dominion over the goods.
(c) A wife is liable to be convicted of larceny if she takes her husband's property
  (i) when she is not living with him, *or*
  (ii) with a view to ceasing to live with him (*g*).

CARRYING AWAY (ASPORTATION).

(a) Mere grasping does not amount to asportation.
(b) The slightest removal suffices.
(c) Every atom of the thing must have left the place which it previously occupied.

THINGS CAPABLE OF BEING STOLEN.

Larceny Act, 1916, s. 1, sub-s. 3 (h).

(1) Must be movable.
(2) Must possess some value.
(3) Must be the property of some person.
  (a) *Res nullius* are not larcenable.
  (b) Ownership must exist before the act of taking.
  (c) A man can commit larceny by stealing his own property if, with intent to defraud, he takes it from a bailee who has a right to exclude him from possession.
  e.g., A pawns his watch with B for £5 and subsequently steals the watch from B.

INTENT OF THE THIEF.

(a) The thief must intend to deprive the owner *permanently* of all the benefits of ownership.
(b) Intention to deprive only temporarily is not sufficient.
(c) Providing the intention to injure the owner exists, the act need not be done to benefit the thief.

OWNERSHIP.

(a) The owner of stolen goods may retake them wherever he finds them, as the goods are still his.
(b) A thief does not become owner, and therefore cannot confer ownership.
(c) If a thief transfers possession of a stolen article, the true owner may sue the possessor.

(*g*) *Married Women's Property Act, 1882* (45 & 46 Vict. c. 75). Formerly at common law a wife could not be indicted for stealing her husband's property, since husband and wife were considered as one person and therefore no change of possession in the legal sense could take place.
(*h*) 6 & 7 Geo. 5, c. 50.

Exceptions:—

A man who in all ignorance of the theft gives the thief valuable consideration in exchange for the stolen property may, in spite of its being stolen, acquire a good title to it if either—

(1) The stolen property consisted of money or negotiable security.

(2) It was transferred to him in "market overt"; but if the thief be prosecuted to conviction, the original owner can recover his property (*i*).

Market Overt (*i.e.*, "Open Market").

In the City of London = An open shop where such goods are usually sold.

In the country and elsewhere = The market place or piece of ground customarily used for the sale of goods.

Market overt in ordinary market towns is only held on the special days provided for particular towns by charter or prescription; but in the City of London every day, except Sunday, is market day.

(2) LARCENY BY A TRICK.

Where the thief, by employing some trick or device, fraudulently induces the owner to part with possession of an article without intending to transfer his property in it.

R. v. *Buckmaster* (*k*).

R. v. *McKale* (*l*).

(3) LARCENY BY INTIMIDATION.

Where a man, having the intention to steal, obtains possession of goods by frightening the owner, *e.g.*, by threatening him with temporary imprisonment unless he delivers up his goods.

R. v. *McGrath* (*m*).

(4) LARCENY BY FINDING.

The finder must

(i) believe that the owner could be discovered, and had not intentionally abandoned the article.

(ii) resolve nevertheless to appropriate it.

(*i*) *Larceny Act, 1916*, s. 45.

(*k*) (1888), 20 Q. B. D. 182; Wilshere, 112.

(*l*) (1868), L. R. 1 C. C. R. 41; Wilshere, 111.

(*m*) L. R. 1 C. C. R. 205.

(5) LARCENY UNDER A MISTAKE ON THE PART OF THE OWNER.

Where the possession is obtained under a mistake on the part of the owner, with knowledge on the part of the taker that possession has been so obtained.

R. v. *Middleton* (*n*).

(6) LARCENY BY A BAILEE.

(a) A "bailee" is a person to whom the legal as well as the physical possession of a thing is temporarily entrusted.

(b) A bailee who fraudulently appropriates to his own use any article entrusted to him with the intention of permanently depriving the bailor of it is guilty of larceny.

(7) AGGRAVATED LARCENY.

(1) Larceny from the Person.

Stealing any chattel, money, or valuable security from the person of another.

(2) Larceny by a Clerk or Servant.

A dishonest servant commits—

(a) Larceny in the case of things received *from* his master.

(b) Embezzlement in the case of things received *for* his master.

(3) Larceny Committed in Certain Places.

(a) Wreck.
(b) Ship.
(c) Dock.
(d) Wharf.
(e) Dwelling-house.

(4) Larceny from the Post Office.

(1) *By an Officer of the Post Office.*

(a) Stealing any postal packet in the course of transmission by post—P.S. 7 years.

(b) If the postal packet contains any chattel, money, or valuable security—P.S. life.

(2) *By any Other Person.*

P.S. life.

(*n*) (1873), L. R. 2 C. C. R. 38; W. C. C. 96.

(8) QUASI-LARCENIES (F).

Offences which at common law were not larcenies, but which, by statutes, have been made felonies punishable like larceny.

Historical Note.

At common law certain kinds of property could not be the subject of larceny.

I. Things Real or Savouring of Realty.
An owner whose rights were violated could not appeal to the *criminal* law to punish the offender, but could only seek redress in an action for trespass in the *civil* Courts.

II. Bonds, Bills, and Other Choses in Action.
A chose in action is a right of proceeding in a Court of law to procure the payment of a sum of money.

III. Res Nullius (*i.e.*, Things not the Subject of Property at all).
(1) Things intentionally abandoned (*o*).
(2) Wild animals.
(3) Corpses.
(4) Water and gas.

Common Law Exceptions.

Certain exceptions to these rules existed at common law, *i.e.*, an indictment for larceny lay, and still lies, for stealing
(1) Domestic animals.
(2) Dead animals, if reduced into possession.
(3) A corpse used as an anatomical specimen.
(4) A corpse with grave clothes, or coffin; for they remain the property of those who bought them.
(5) Gas or water, if reduced into possession, *e.g.*, when they are in the pipes of the company supplying them.

Statutory Exceptions.

The following offences were, by statute, made felonies punishable like larceny :—

I. By the Larceny Act, 1861 (*p*).
It is a felony punishable like larceny to "steal" any of the following :—

(*o*) These cannot now be the subject of larceny.
(*p*) 24 & 25 Vict. c. 96.

(1) Enclosed wild deer (*q*).
(2) Fish in private waters (*r*).
(3) Dogs (*s*).

II. By the Larceny Act, 1916.

It is a felony to "steal" any of the following kinds of property, and special sections govern the punishments which are applicable in each case :—

(1) Materials of buildings, fixtures, etc. (*t*).
(2) Mineral ore (*u*).
(3) Trees, etc., over £5 in value (*x*).
(4) Title deeds (*y*).
(5) Choses in action and valuable securities (*z*).
(6) Wills and other testamentary instruments (*a*).
(7) Records (*b*).
(8) Electricity (*c*).
(9) Oysters (*d*).
(10) Horses, cattle, and sheep (*e*).
(11) Any creature, alive or dead, if it has any value and is the property of any person (*f*).

(II) ROBBERY (F).

When a person
(i) unlawfully takes possession
(ii) of the goods of another
(iii) from his person or in his presence
(iv) by means of violence
(v) against the owner's will
(vi) with intent to deprive him permanently of all the benefits of ownership.

Possession.

(a) The accused must have had possession of the goods at some particular moment.
(b) It is immaterial for how long.

R. v. *Lapier* (*g*).

Violence.

The essential attribute of robbery.
Stealing without violence = larceny.

(*q*) 24 & 25 Vict. c. 96, ss. 12-15.
(*r*) *Ibid.*, s. 24.
(*s*) *Ibid.*, ss. 18-19.
(*t*) Section 8, sub-section 1.
(*u*) Section 11.
(*x*) Section 8.
(*y*) Section 7, sub-section 1.
(*z*) Section 2.
(*a*) Section 6.
(*b*) Section 7, sub-sections 2, 3.
(*c*) Section 10.
(*d*) Section 1, sub-section 3; section 2.
(*e*) Section 3.
(*f*) Section 1, sub-section 3.
(*g*) (1784), 2 East, P. C. 557, 708; 1 Leach, 320; Wilshere, 130.

(a) The accused's conduct must be such as would inspire fear in the mind of an ordinary person.
(b) If violence is actually used, it is not necessary to prove (a).
(c) The violence must be used with the intention of gaining possession of the goods.
(d) Being armed with an offensive weapon or instrument will constitute "violence."

AGAINST THE OWNER'S WILL.
(a) Consent of the owner is a good defence.
(b) Such consent must not have been induced by fear.

INTENT.
The accused must have a criminal intent.
R. v. *Hall* (*h*).

Distinction between Simple Robbery and Robbery with Violence.

SIMPLE ROBBERY.
The felonious and *forcible* taking from another of his property against his will by violence or putting him in fear.

ROBBERY WITH VIOLENCE.
When the prisoner at the time of or immediately before or after the robbery uses any *personal* violence to the person robbed.

Punishments.
Simple Robbery = P.S. 14 years.
Robbery with Violence = P.S. life and whipping.

(III) EMBEZZLEMENT (F).

When a person
(i) who is employed as a clerk or servant
(ii) receives any chattel for and on account of his master, and
(iii) unlawfully appropriates the same to his own use.

CLERK OR SERVANT.
(a) In order to determine whether B is or is not the servant of A the following 4 points should be ascertained :—
(i) Did A engage B?
(ii) Did A give B orders? (*i*).

(*h*) (1828), 3 C. & P. 409.
(*i*) *I.e.*, Is B bound to obey the orders of A so as to be under his control, or is he at liberty to work or not, as he pleases? If the latter, B is not a clerk or servant.

(iii) Did A pay B wages?
(iv) Could A discharge B?
If the answer in each case is in the affirmative, B is deemed to be A's servant.

(b) It is for the Judge to explain what constitutes being a clerk or servant, and for the jury to decide whether the accused was in fact in such a position.

R. v. *Bowers* (*k*).
R. v. *Harris* (*l*).

RECEIPT FOR THE MASTER.

(a) That the money was received for the master is a matter for the jury to decide from the circumstances of the case.

(b) It is immaterial that the money was not really due to the master.

(c) But it must be the property of the master when the servant received it.

APPROPRIATION.

(a) The servant must receive the property before it comes into his master's possession.

Reed's Case (*m*).

(b) If the servant misappropriates the property after it comes into his master's possession, he is guilty of larceny by a servant.

(c) The usual method of appropriation is for the accused to have received the money and denied that he has done so, or practised some form of deceit (*e.g.*, rendering a false account) in order to escape detection.

(d) A specific sum must have been embezzled; it is not sufficient to prove a general deficiency in the accused's accounts.

(IIIa) FALSIFICATION OF ACCOUNTS (M).

Wilfully, with intent to defraud, altering, making a false entry in, or omitting a material particular from a master's account (*n*).

(IIIb) EMBEZZLEMENT BY TRUSTEES (M).

Fraudulently to convert to one's own use, or to that of a third person, any property or proceeds thereof held on trust

(a) for any person;
(b) for any public or charitable purpose.

(*k*) (1866), L. R. 1 C. C. R. 41; Wilshere, 138.
(*l*) (1893), 17 Cox, 656.
(*m*) (1853), Dears. 168.
(*n*) 38 & 39 Vict. c. 24.

(IIIc) EMBEZZLEMENT BY DIRECTORS, OFFICERS AND MEMBERS OF PUBLIC COMPANIES AND CORPORATE BODIES (M).

(IV) FRAUDULENT CONVERSION (M).

Larceny Act, 1916 (*o*).

(a) When a person
- (i) who is entrusted with any property
- (ii) in order that he may retain it in safe custody
- (iii) or apply or pay or deliver it (or any part of it or any proceeds of it)
- (iv) or has received any property for or on account of any other person
- (v) fraudulently converts the property (or any part or any proceeds of it) to his own use or benefit
- (vi) or to the use or benefit of any other person.

(b) The difference between this offence and Larceny is that in order to be guilty of larceny the prisoner must have taken the property without the consent of the owner or by some trick (*p*); whereas in Fraudulent Conversion the prisoner may be lawfully in possession of the property with the consent of the owner.

(V) FALSE PRETENCES (M).

Larceny Act, 1916 (*q*).

When a person
- (i) by any false pretence,
- (ii) with intent to defraud,
- (iii) obtains from any other person any chattel, money or valuable security.

THE PRETENCE AND ITS FALSITY.

(a) Must be wholly or in part of an existing fact.

(1) Must relate to the past or the present, not to the future.

R. v. *Lee* (*r*).

(2) But a promise to do a thing and a false representation that the promisor has the power to do it will be sufficient.

R. v. *Jennison* (*s*).

R. v. *Isaac Gordon* (*t*).

(*o*) 6 & 7 Geo. 5, c. 50.
(*p*) See *ante*, page 48.
(*q*) 6 & 7 Geo. 5, c. 50.
(*r*) (1863), 9 Cox, 304; Wilshere, 155.
(*s*) (1862), L. & C. 157; Wilshere, 156.
(*t*) (1889), 23 Q. B. D. 354.

(3) A mere expression of opinion, however exaggerated, is not a false pretence, *e.g.*, a tradesman puffing his wares.

R. v. *Bryan* (*u*).

(b) Need not be expressed in words, but may be inferred from acts or conduct.

(c) Must be made with knowledge or recklessness of its falsity.

THE INTENT TO DEFRAUD.

(a) It is not necessary to allege in the indictment an intent to defraud any particular person.

(b) An intent to defraud generally is sufficient; but someone must actually have been defrauded.

(c) The fact that the prisoner, at the time he obtained the goods by false pretences, intended to pay for them when it should be in his power to do so is no defence to an indictment for obtaining such goods by false pretences (*x*).

R. v. *Nayler* (*y*).

THE OBTAINING.

(a) Change of ownership must have been actually caused by the pretence and not merely have been subsequent to it.

(b) There must have been an intention to deprive the owner permanently of the goods.

(c) It is no defence that the goods were not in existence at the time when the false pretence was made.

R. v. *Martin* (*z*).

INDUCEMENT.

(a) The pretence must have induced the prosecutor either wholly or in part to have parted with his property.

(b) It is a good defence to show that the pretence in no way so contributed.

(c) But if the offence charged be merely the *attempt* to obtain goods, etc., by false pretences, it is not essential that the mind of the prosecutor was affected by the false pretence.

(*u*) (1857), 7 Cox, 313.

(*x*) But it may be a matter for the jury to take into consideration when determining whether there was any intent to defraud.

(*y*) 10 Cox, 149.

(*z*) (1867), L. R. 1 C. C. R. 56; Wilshere, 165.

Difference between False Pretences and Larceny by a Trick (*a*).

False Pretences.	Larceny by a Trick.
(1)	
Owner intends to transfer his property in the article.	Owner does not so intend.
(2)	
Thief gets voidable ownership.	Thief gets no title at all beyond possession.

(Va) FALSE PERSONATION TO OBTAIN PROPERTY (F.).

False Personation Act, 1874 (*b*).

(VI) OBTAINING CREDIT BY FRAUD (M).

Debtors Act, 1869 (*c*).

(a) When a person
  (i) in incurring a debt or liability
  (ii) obtains credit
  (iii) by false pretences or by means of any other fraud.

(b) A person may be convicted of obtaining credit by fraud, who enters a restaurant and orders and consumes refreshments, knowing that he cannot pay for them.

R. v. *Jones* (*d*).

(c) The "Long Firm Fraud."
  (1) This is the most common kind of obtaining credit by fraud.
  (2) It is generally carried out by one or more persons who take a small accommodation address from which they send out to various wholesale merchants orders for large quantities of goods on credit. In many cases false references are supplied. When the goods are delivered, they are sold immediately for whatever they will fetch (often at prices under cost), and the perpetrators of the fraud then disappear with the money thus obtained.

(*a*) The distinction is not of great importance, for the *Larceny Act, 1916*, s. 44, allows a person indicted for stealing to be convicted of false pretence and *vice versa*.

(*b*) 37 & 38 Vict. c. 36.

(*c*) 32 & 33 Vict. c. 62, s. 13.

(*d*) [1898] 1 Q. B. 119; Wilshere, 150.

(3) The essence of this fraud lies in the fact that the perpetrators of it never intended to pay for any of the goods they ordered on credit, and this is often shown by proving that they were not (and never could hope to be) in a position to do so.

(VII) CHEATING (M).

A common law cheat is a person who fraudulently obtains the property of another by any deceitful and illegal practice which affects or may affect the public.

A cheat or fraud effected by an unfair dealing in a private transaction is not the subject of an indictment at common law.

THE CHIEF CLASSES OF THIS OFFENCE.

(1) Against public justice, *e.g.*, counterfeiting a discharge from gaol.
(2) Against public health, *e.g.*, selling unwholesome provisions.
(3) Against public economy, *e.g.*, using false weights or measures.

(VIII) RECEIVING STOLEN GOODS (F) OR (M).

When a person
(i) receives into his possession
(ii) goods which have been stolen or otherwise dishonestly obtained,
(iii) knowing at the time he receives them that they have been stolen or otherwise dishonestly obtained.

POINTS TO NOTE.

(a) This offence was formerly a misdemeanour at common law.
(b) Now by the *Larceny Act, 1916* (*e*),
"Every person who receives any property knowing the same to have been stolen or obtained in any way whatsoever under circumstances which amount to felony or misdemeanour is guilty of an offence of the like degree."
(c) The prosecution must prove :—
(1) That the property was stolen (*f*).
(2) That the accused received it.

(*e*) 6 & 7 Geo. 5, c. 50, s. 33.
(*f*) For the purposes of this section the word "stolen" means "stolen or otherwise dishonestly obtained."

(3) That at the time he received it he knew that it was stolen.

"Knew" = must, as a reasonable man, have had grounds for believing that the property was stolen.

(d) If the accused can give any explanation of how the goods came into his possession which

(1) might reasonably be true, and

(2) is consistent with his innocence,

the jury, even if they are not convinced that the explanation is true, must acquit him.

R. v. *Abramovitch* (*g*).

(e) Evidence of Guilty Knowledge.

Larceny Act, 1916 (*h*).

The following may be given in evidence at any stage of a trial for receiving stolen goods :—

(1) The fact that other property stolen within twelve months preceding the date of the offence charged was found or had been in his possession.

(2) The fact that within the five years preceding the date of the offence charged he was convicted of any offence involving fraud or dishonesty; but only if

(i) seven days' notice in writing is given to the accused;

(ii) evidence has been given that the property in respect of which the accused is being tried was found or had been in his possession.

(IX) FORGERY (F) (*i*).

Forgery Act, 1913 (*k*).

By this Act "forgery" is defined as "the making of a false document in order that it may be used as genuine."

What is a "Document."

(a) There is no definition of "document" given by the Act.

(*g*) (1912), 76 J. P. 287; 11 Cr. App. R. 45; Wilshere, 133.

(*h*) 6 & 7 Geo. 5, c. 50, s. 43, sub-s. 1.

(*i*) At common law forgery was defined as "fraudulently making or altering any document or part thereof with intent to defraud," and was a misdemeanour. Certain offences of forgery not specified in the *Forgery Act, 1913*, are still misdemeanours at common law, *e.g.*, forging a pass on a railway, forging a testimonial as to character, forging a certificate of a clergyman's ordination.

(*k*) 3 & 4 Geo. 5, c. 27.

(b) The following instruments have been held not to be included in the word "document" (*l*).

(i) A trade mark or sign, even though it be written or printed.

E.g., A prints a number of wrappers imitating advertisements in which egg powders were wrapped by B, their maker. A encloses spurious egg powders in these wrappers and sells them. This is not forgery, though it is obtaining money by false pretences.

R. v. *John Smith* (*m*).

(ii) A picture.

E.g., A paints a picture, and, intending to represent that it was painted by an eminent artist, writes that artist's name in the corner. This is not forgery, though it may be a cheat.

R. v. *Closs* (*n*).

(c) A telegram is a "document."

E.g., A, a post-office clerk, having learned the result of a race, despatches a telegram to a bookmaker, making a bet upon the winner. This telegram purports to have been sent 10 minutes before the race was run. This is forgery.

R. v. *Riley* (*o*).

(d) In the case of seals and dies mentioned in the Act the counterfeiting of such a seal or die, with intent to defraud, is forgery (*p*).

WHEN IS A DOCUMENT "FALSE."

(a) The *Forgery Act, 1913*, states several manners in which a document may be false.

(b) The effect of this was that, if the alleged forgery did not come within the manners stated in the Act, the document was deemed not to be false within the meaning of the Act.

(c) The *Criminal Justice Act, 1925* (*q*), states that a document may be false, although it is not "false"

(*l*) These decisions were all prior to the passing of the *Forgery Act, 1913*, but, as that Act does not define "document," it is submitted that these decisions are still law.

(*m*) (1858), D. & B. 566; Wilshere, 206.

(*n*) D. & B. 460; Wilshere, 205.

(*o*) [1896] 1 Q. B. 309; Wilshere, 202.

(*p*) *Forgery Act, 1913*, s. 1, sub-s. 1.

(*q*) 15 & 16 Geo. 5, c. 86, s. 35.

in any one of the manners described in the *Forgery Act, 1913*.

(d) A document is false if any alteration has been made in it.

E.g., (i) Affixing a seal or stamp or altering one already on.

(ii) Writing, erasing, or omitting words, letters, or figures.

(e) Such alteration must be of a material part of the document, *i.e.*, it must give the document a different meaning.

R. v. *Griffiths* (*r*).

E.g., the crossing on a cheque or other document, the crossing of which is recognised by law, has been held to be a material part of such document (*s*).

INTENT TO DEFRAUD.

(a) If the document be a *private* one, there must be intent to *defraud* in order to constitute forgery; if the document be a *public* one, intent merely to *deceive*, *i.e.*, to use it as genuine, is sufficient.

(b) The fact that the accused had the intention of defrauding is sufficient.

(c) Not necessary for him to have intended to defraud any particular person.

(d) Not necessary that anyone should have been defrauded.

(e) Not even necessary that anyone could have been defrauded.

(IXa) UTTERING (F) OR (M).

A person utters a forged document when

(i) knowing it to be forged,

(ii) and with intent to defraud,

(iii) he makes any use of it,

(iv) in order to obtain money or credit.

Guilty knowledge may be shown by evidence that he has uttered other similar forged documents.

(IXb) POSSESSION OF FORGED DOCUMENTS AND IMPLEMENTS OF FORGERY (F).

(i) Without lawful authority or excuse, and

(ii) knowing their character.

(*r*) (1858), D. & B. 548.

(*s*) *Forgery Act, 1913*, s. 1, sub-s. 3.

(X) BURGLARY AND HOUSEBREAKING.

(1) BURGLARY (F).

Larceny Act, 1916, s. 25 (t).

When any person
(i) in the night
(ii) breaks
(iii) and enters
(iv) the dwelling-house of another
(v) with intent to commit a felony therein, or
(vi) breaks out of the dwelling-house of another, having
(a) entered the said dwelling-house with intent to commit a felony therein, or
(b) committed any felony in the said house.

TIME.

Between 9 P.M. and 6 A.M.

BREAKING.

(a) Must be of part of the house; therefore, if only a gate admitting into the yard is broken, it will not satisfy the requirements of burglary.
(b) Neither will breaking chests or cupboards.
(c) "Breaking" may be of two kinds :—

(1) *Actual.*
Where the accused displaces any part of the building or of its *closed* fastenings (*u*).

(2) *Constructive.*
(i) Where the displacement has been effected by some authorised person.
E.g., if a servant conspires with a burglar and lets him into the house at night.
(ii) Where there has been no displacement at all.
Viz., when the burglar comes into the house by some aperture which by necessity is permanently left open.
E.g., coming down the chimney (*x*).

ENTERING.

(a) The insertion of any part of the body.
(b) The insertion of an instrument for the purpose of removing goods.

(*t*) 6 & 7 Geo. 5, c. 50.
(*u*) Pushing further open a door already slightly open would not constitute "breaking."
(*x*) But if he entered through a window which had been left open, it would not constitute burglary.

(c) The fact that the instrument used for breaking penetrates into the house does not constitute an entry.

PLACE.

Dwelling-house.

(a) One in which the occupier or some member of his family habitually sleeps at night.

(b) Must be a permanent building, not a tent or other temporary structure.

(c) Need not be a distinct building; chambers in a college will suffice.

Of another.

(a) A man cannot commit burglary in his own house.

(b) If A breaks and enters the room of his lodger and steals therein, he commits larceny.

INTENT.

There must be an intention to commit some felony, though it need not actually be committed.

(2) HOUSEBREAKING (F) (*y*).

Differs from burglary :—

(1) Can be committed by day.

(2) Extends to a wider range of buildings, *e.g.*, shops, warehouses, offices, etc.

(3) Different maximum punishment (*z*).

(3) SACRILEGE (F).

(1) To break and enter and commit a felony in, or to enter and commit a felony and then break out of, a place of Divine worship.

(2) To break and enter such a place with intent to commit a felony therein, if that felony be not accomplished, constitutes the offence of Housebreaking.

(4) OTHER OFFENCES CONNECTED WITH BURGLARY.

(1) Entering (without breaking) a dwelling-house by night with intent to commit a felony therein (F).

When the breaking with intent to commit a felony is proved, but there is no proof of entry, the accused may be convicted of an attempt to commit burglary.

(*y*) *Larceny Act, 1916*, ss. 26, 27.

(*z*) Burglary = P.S. life. Housebreaking (i) if a felony be committed = P.S. 14 years; (ii) if a felony be not committed = P.S. 7 years.

(2) Being found by night in a dwelling-house with intent, etc. (M).
(3) Being found by night with housebreaking implements without lawful excuse (M).

(XI) ARSON (F).

Malicious Damage to Property Act, 1861 (*a*).

Unlawfully and maliciously to set fire to any of the following :—

(1) King's ship.
(2) King's dockyard.
(3) Any ship in the Port of London.
(4) Church or any other place of Divine worship.
(5) Public building.
(6) Railway station.
(7) Stack.
(8) Coal mine.
(9) Ship.
(10) Dwelling-house when anyone is inside.
(11) Any building if with intent to injure or defraud.
(12) Any building under any other circumstances.
(13) Crops or plantations.

Maliciously.

(a) Burning by negligence is no crime.
(b) To commit arson the incendiary must have intended the building to take fire, or have thought it probable that it might do so, and not have minded whether it did or not.

Setting Fire to.

(a) Setting on fire.
(b) It is sufficient if any part of the building be consumed.

(XII) OTHER MALICIOUS INJURIES TO PROPERTY.

Malicious Damage to Property Act, 1861 (*b*).

(a) Unlawfully and maliciously to damage any of the following :—
(1) Houses (F).
(2) Manufactures and machinery (F).
(3) Mines (F).
(4) Vessels (F).
(5) Sea and river banks (F).
(6) Bridges, viaducts, and aqueducts (F).
(7) Turnpikes (M).

(*a*) 24 & 25 Vict. c. 97. (*b*) 24 & 25 Vict. c. 97.

(8) Telegraphs (M).
(9) Ponds and fish (M).
(10) Animals (F).
(11) Trees and plants (*c*).
(12) Works of art (M).

(b) Unlawfully and maliciously to commit any damage to any real or personal property, either of a public or private nature, and not coming under the Act (M).

(XIII) OFFENCES UNDER THE LAND REGISTRATION ACT, 1925 (*d*).

(A) Misdemeanours.

(1) In the course of any proceeding under the Act before a Registrar or Court, to suppress any document or fact with intent either to—
  (a) conceal the title or claim of any person, or
  (b) substantiate any false claim (*e*).

(2) Fraudulently to procure any entry on, or alteration of, the land register or any land certificate (*f*).

(3) In disposing of any property for valuable consideration either to—
  (a) conceal any indorsement or encumbrance material to the title, or
  (b) falsify any pedigree upon which the title depends,
in order to influence the purchaser to accept the title offered (*g*).

(B) Petty Offences.

(1) For any person not a barrister or solicitor to prepare any instrument or lodge any document in the land registry for any fee, gain or reward (*h*).

(2) For any person without lawful authority to place or drive any vehicle, camp or light fires on any common (*i*).

(*c*) Petty offences.
(*d*) No criminal proceedings under this Act affect any remedy of civil procedure : section 119.
(*e*) Section 115.
(*f*) Section 116.
(*g*) Section 183. In order to bring a prosecution under this section, the fiat of the Attorney-General is necessary.
(*h*) Section 118.
(*i*) Section 193, sub-section 4.

PART III.

CHAPTER I.

THE CRIMINAL COURTS.

(I) THE HIGH COURT OF PARLIAMENT.

The highest Court of the realm.
Its jurisdiction is exercised by the House of Lords.

(A) As a Court of First Instance.

(1) IMPEACHMENT.
Any person impeached by the House of Commons must be tried by the House of Lords (*a*).

(2) INDICTMENT (*b*).
Peers accused of Treason, Felony or Misprision (*c*) must be tried by their peers (*d*).
A true bill is found by a grand jury in the K.B.D. or at assizes, and the indictment is then removed to the House of Lords by a writ of *certiorari*. The Lord High Steward presides over the Court as chairman, and votes with the other peers.

(B) As a Court of Appeal.

Criminal Appeal Act, 1907, s. 1, sub-s. 6.

If a certificate be obtained from the Attorney-General that the decision of the Court of Criminal Appeal involves a point of law of such exceptional public importance that it is desirable in the public interest to have the highest decision on it, an appeal may be brought to the House of Lords by either the prosecution or the defence (*e*).
In such cases the Court is composed only of Lords of Appeal, of whom at least three must be present.
Appellate Jurisdiction Act, 1876 (*f*).
It may sit during the dissolution of Parliament.

(*a*) The last case of impeachment was Lord Melville, 1805.
(*b*) Bishops are not tried in this Court.
(*c*) Peers are tried before the ordinary tribunals for misdemeanour.
(*d*) *R.* v. *Earl Russell*, [1901] A. C. 446.
(*e*) *R.* v. *Beard* (1919), 14 Cr. App. Rep. 110.
(*f*) 39 & 40 Vict. c. 59, ss. 3, 5, 9.

(II) THE COURT OF THE LORD HIGH STEWARD.

Sits for the purpose of trying peers for Treason, Felony or Misprision when Parliament is dissolved or in recess.

The decision is by a majority of not less than twelve, therefore at least twenty-three must be present. The Lord High Steward sits as Judge and therefore cannot vote.

Bishops cannot be summoned to this Court, nor have they the right of being tried there.

(III) THE COURT OF CRIMINAL APPEAL.

The Writ of Error.

(a) Before 1908 a convicted prisoner had no right of direct appeal.

(b) He had many opportunities of raising points of law at all stages of the proceedings.

(c) And if the defect upon which he relied appeared on the face of the record, he could apply to the Attorney-General for a *Writ of Error*, which could be argued in the King's Bench Division and even up to the House of Lords.

(d) But if there was no point of law which the prisoner could raise in his defence and the jury found him guilty on the facts, the prisoner could do nothing.

The Court for Crown Cases Reserved.

(a) Should a Judge on circuit be uncertain as to some intricate point of law, he could, before 1848, suspend punishment until after consulting his brother Judges in London.

(b) In 1848 the Court for the Consideration of Crown Cases Reserved was created by the *Crown Cases Reserved Act* (*g*).

(c) A Judge could then state the facts on which any intricate point of law arose for the opinion of this Court.

(d) The C.C.R. could, if it thought fit, set aside the verdict and quash the conviction.

(e) But a case could only be stated on a point of *law* and a Judge could not be compelled to state a case if he did not wish to do so.

The Court of Criminal Appeal.

(a) In 1907 (*h*) the *Criminal Appeal Act* (*i*) abolished both the *Writ of Error* and the *Court for Crown Cases Reserved*, and created the Court of Criminal Appeal.

(*g*) 11 & 12 Vict. c. 78.
(*h*) As the result of a committee of inquiry into the case of Adolf Beck.
(*i*) 7 Edw. 7, c. 23, s. 1, as amended by 8 Edw. 7, c. 46, s. 1.

(b) This Court consists of the Lord Chief Justice and the Judges of the K.B.D.

(c) There must be an uneven number of Judges present—it is usually three—and only a single judgment is delivered.

(d) Appeal lies from Q.S., assizes, or the C.C.C.

(e) Notice of appeal or application for leave to appeal must be sent to the Registrar of the C.C.A. within 10 days after conviction.

(f) The prisoner can appeal against *conviction*:—
  (1) On any question of *law*.
  (2) On any question of *fact* or mixed law and fact, provided he obtains either
    (i) leave of the C.C.A., or
    (ii) certificate from the Judge who tried the case that it is a fit case for appeal.

(g) The prisoner can appeal against *sentence*:—
  (1) If he obtains leave of the C.C.A.
  (2) A person sentenced as an habitual criminal may appeal against his sentence without first obtaining any such leave.
  (3) A person convicted at Petty Sessions as an incorrigible rogue and sentenced as such at Q.S. or assizes (*j*), may appeal with leave against his sentence.

GROUNDS OF APPEAL.

(1) *Defect in the indictment.*
  (a) Provided it has not been cured in the course of the trial or by the verdict.
  (b) The defect must be one of substance, otherwise the C.C.A. will decide that no substantial miscarriage of justice has taken place.

(2) *Wrongful admission of evidence.*

(3) *Wrongful exclusion of evidence.*

(4) *No case to go to the jury.*
Even if a submission has been made at the close of the prosecution which the Judge has wrongly overruled, if the evidence for the defence supplies what was lacking in that of the prosecution, the C.C.A. will not quash the conviction.

(5) *Absence of corroboration.*
Failure of the Judge to warn the jury of the danger of convicting upon the uncorroborated testimony of an accomplice or single witness.
R. v. *Beebe* (*k*).

(*j*) See *ante*, page 30.

(*k*) (1925), 89 J. P. 175.

(6) *Misdirection of the jury by the Judge.*
(7) *No evidence upon which a jury could rightly convict.* It is not sufficient to show that the case against the prisoner was a weak one.
(8) *Miscarriage of justice.*

(h) The C.C.A. may :—
(1) Increase or diminish the sentence.
(2) Quash the conviction.
(3) Hear fresh evidence.

(i) It cannot grant a new trial (*l*).
But where the C.C.A. holds that the trial of a prisoner has been a nullity, it has power to order that he be tried on the indictment in question; and in such a case it may grant a writ of *venire de novo*, *i.e.*, an order to summon and swear a fresh jury to try the case.
R. v. *Hussey* (*m*).

(IV) THE KING'S BENCH DIVISION.

Criminal Jurisdiction.

(A) Original (As a Court of First Instance).
(1) Any crime committed out of England by public officials.
(2) Any indictable crime in London or Middlesex where the indictment is found by a jury summoned specially for the purpose by the Master of the Crown Office.
(3) Any misdemeanour in whatever part of England committed for which a criminal information has been filed by some officer of the Crown.

(B) Supervisory (On a Writ of Certiorari).
An indictment from any inferior Court may be removed into the K.B.D. on one of the following grounds :—
(1) A fair trial cannot be had in the Court below owing to local prejudice.
(2) Some question of law of unusual difficulty is likely to arise.
(3) A special jury or a view of certain premises is necessary and cannot be obtained in the Court below.

(*l*) An apparent exception exists in the case of an indictment at common law in relation to the non-repair or obstruction of any highway, public bridge, or navigable river, in whatever Court the indictment be tried; for such a proceeding, though criminal in form, is really civil in character.
(*m*) 18 Cr. App. Rep. 121.

(C) Appellate (As a Court of Appeal).

(1) It can review, and if necessary quash, any proceeding by a Court of Q.S. or any lower Court (*n*) which is brought before it by a *Writ of Certiorari*.

(2) J.P.s may state a case at Petty Sessions for the opinion of the K.B.D. on any point of law which has arisen before them.

(3) (a) Q.S. may only state a case which has arisen on an appeal from Petty Sessions.

(b) By the *Criminal Justice Act, 1925, s. 20.*

(i) If either party considers that the decision of an appeal to Q.S. is erroneous in point of law, he may apply in writing to the Court of Q.S. within seven days to have a case stated for the decision of the High Court.

(ii) If Q.S. considers such application frivolous, it may instruct the clerk of the peace to deliver to the applicant a certificate stating that it refuses to state a case and giving the reasons.

(iii) The applicant may then apply to the High Court for a rule calling on Q.S. and the other party to show cause why a case should not be stated; and the ruling of the High Court shall be final.

(4) The K.B.D. may :—

(a) Quash the proceedings and make any order which ought to have been made.

(b) Send back the case for re-hearing and determination (*o*).

Trial.

A trial in the K.B.D. may be either

(a) Before *one* Judge, as at assizes, or

(b) *At Bar.*

(i) Before a Divisional Court composed, as a rule, of three Judges and a special jury (*p*).

(ii) Where an indictment has been removed by *certiorari* into the K.B.D., the Attorney-General, if prosecuting on behalf of the Crown, has the right to demand a trial at bar.

(iii) Otherwise a trial at bar can be obtained only by order of the Court in exceptional cases.

(*n*) Not proceedings by assizes or the C.C.C.

(*o*) C.C.A. cannot do this.

(*p*) Trial at Bar was formerly before *all* the Judges of the Court.

Crown Paper.

(a) A Crown Paper is a list of the cases on the Crown side of the K.B.D.

(b) The prerogative and criminal jurisdiction of the K.B.D. is said to be on the Crown side.

(V) THE CENTRAL CRIMINAL COURT ("THE OLD BAILEY").

(1) Created in 1834 by the *Central Criminal Court Act* (*q*), and made a branch of the High Court of Justice by the *Judicature Act, 1873* (*r*).

(2) Assize Court for Middlesex and London (*s*).

(3) It sits twelve times a year.

(4) Tries :—

(a) Any indictable offence committed in
(i) The City of London.
(ii) The counties of London and Middlesex.
(iii) Certain specified portions of Essex, Kent and Surrey.

(b) Cases of piracy.

(c) All crimes committed within the jurisdiction of the Admiralty (*t*).

(d) Felonies and misdemeanours committed out of the jurisdiction of the C.C.C., which have been removed by *certiorari* to the K.B.D. and sent on to the C.C.C. for trial (*u*).

(e) Any such indictment removed by the K.B.D. to the C.C.C. from an inferior Court.

(5) No appellate jurisdiction.

(6) Consists of :—
The Lord Chancellor.
Judges of the K.B.D. (*v*).
Lord Mayor, Aldermen, Recorder and Common Serjeant of the City of London.

(*q*) 4 & 5 Will. 4, c. 36.

(*r*) 36 & 37 Vict. c. 66, ss. 16, 29; repealed and re-enacted by the *Judicature Act, 1925* (15 & 16 Geo. 5, c. 49).

(*s*) Some text-books state that the C.C.C. is Q.S. for the City of London. It is true that the office of the Clerk of the Peace for the City is in the C.C. Court building, and that certain cases which are triable at Q.S. are, for convenience' sake, sent to the C.C.C.; but the actual Q.S. for the City are held in the Guildhall before a bench of aldermen, presided over by the Recorder of London as chairman.

(*t*) As to what is the "jurisdiction of the Admiralty" see the *Territorial Waters Jurisdiction Act, 1878* (41 & 42 Vict. c. 73).

(*u*) 19 & 20 Vict. c. 16, ss. 1, 3.

(*v*) There is a rota of the Judges of K.B.D., and each Judge visits the C.C.C. as his turn comes round.

Judge of the City of London Court.

(7) There are four Courts in the C.C.C.
Court I is assigned to the visiting Judge of the K.B.D.
The Recorder sits in Court II and the Common Serjeant in Court III.
Court IV is occupied by the Judge of the City of London Court, sitting as a Commissioner of Assize.

(8) The Recorder, Common Serjeant and Commissioner usually sit on the first two days, after which they are joined by a Judge of the K.B.D., who tries the more serious cases (*x*).

(VI) THE ASSIZES (*y*).

(A) England and Wales are divided into eight circuits (*z*) over each of which the Judges of the K.B.D. travel, holding a Court in the assize town of each county, two, three or four times a year.

(B) The Judges sit under two commissions :—

(1) **Oyer and Terminer.**

Empowering them to try all persons against whom an indictment has been presented within the county of that assize.

(2) **General Gaol Delivery.**

Empowering them to try any prisoner in gaol or released on bail.

(C) A Court of assize has no appellate jurisdiction.

(VII) QUARTER SESSIONS (*a*).

(1) General County Sessions.

(a) Held in every county once every quarter at stated times

(b) before two or more J.P.s and presided over by a *Chairman*.

ORIGIN.

(a) In Anglo-Saxon times, the chief Court was the Shire

(*x*) On the first day the Recorder sits in Court I. The business on this day consists chiefly in charging the grand jury, hearing any applications which may be made, and disposing of any true bills which the grand jury may return if they can conveniently be disposed of.

(*y*) By the *Judicature Act, 1873*, repealed and re-enacted by the *Judicature Act, 1925*, the assizes are to be regarded as branches of the High Court of Justice and are superior Courts of Record.

(*z*) *Viz.* (i) Northern, (ii) North Eastern, (iii) Midland, (iv) South Eastern, (v) Oxford, (vi) Western, (vii) North Wales, (viii) South Wales.

(*a*) Every Court of Q.S. is an inferior Court of Record.

Gemote or County Court, which was presided over by the sheriff.

(b) This County Court originally met two or three times each year, but in the thirteenth century it met every month.

(c) Henry II established a system of circuit Judges, known as the Justices in Eyre (or Itinere), who went round the country trying the more important cases in these County Courts.

(d) Each County Court had two great meetings every year to meet the Justices in Eyre.

(e) But they also continued to hold ordinary meetings at which the sheriff presided.

(f) Edward III appointed J.P.s for each county and enacted that they should meet at least four times a year.

(g) The ordinary meetings of the County Courts soon became displaced by these quarterly meetings of J.P.s, which were the origin of and are now known as "Quarter Sessions of the Peace for the County."

(2) Borough Sessions.

Many corporate towns or boroughs have quarter sessions of their own which exempts them from the jurisdiction of County Quarter Sessions.

ORIGIN.

(a) In Anglo-Saxon times, certain cities, *e.g.*, Winchester, York, London, had acquired the right of holding Courts of their own to determine all disputes which arose within the city.

(b) In the thirteenth and fourteenth centuries the Crown (wishing to strengthen the towns and thus lessen the power of the nobles) granted to many boroughs charters which created Courts of criminal and civil jurisdiction.

(c) From these are directly descended our Borough Courts of Quarter Sessions and our Civil Borough Courts of Record.

RECORDER.

(a) The Judge of this Court is called a *Recorder*.

(b) He is appointed by the Crown on recommendation of the Home Secretary.

(c) He must be a barrister of not less than five years' standing.

(d) He is *ex officio* a J.P. for the county.

(e) He tries indictments with the aid of a jury but is sole Judge of the Court.

Jurisdiction.

(1) ORIGINAL.

The following offences are not triable at Quarter Sessions :

(1) Offences punishable with death or penal servitude for life (*b*).

(2) Certain crimes likely to involve difficult questions of law, *e.g.*,

Abduction.
Bigamy.
Bribery (*c*).
Concealment of birth.
False personation.
Forgery (*d*).
Incest.
Larceny of documents of title, judicial records or wills.
Libel.
Perjury (*e*).
Præmunire.

(3) Offences against the :—

Criminal Law Amendment Act, 1885 (*f*).
Mental Deficiency Act, 1913 (*g*).
Official Secrets Acts, 1911 & 1920 (*h*).

(2) APPELLATE.

Appeals from Petty Sessions.

(a) In the case of a conviction by a Court of summary jurisdiction there is a general right of appeal to Quarter Sessions (*i*) if the accused has not pleaded guilty.

Criminal Justice Administration Act, 1914 (*j*).

(*b*) Except burglary, which may be tried at Q.S.

(*c*) Except bribery by and of members of corporations within the *Public Bodies Corrupt Practices Act, 1889* (52 & 53 Vict. c. 69).

(*d*) Offences under the *Forgery Act, 1913*, s. 2, sub-s. 2 (a), and s. 7 (a), where the amount of money or the value of the property in respect of which the offence is committed does not exceed £20 may be tried at Q.S. : *Criminal Justice Act, 1925*, s. 18, Sched. I, para. 6.

(*e*) Offences under section 5 of the *Perjury Act, 1911*, in relation to statements in statutory declarations may be tried at Q.S. : *Criminal Justice Act, 1925*, s. 18, Sched. I, para. 5.

(*f*) 48 & 49 Vict. c. 69, except offences under section 13 dealing with the suppression of brothels if the prisoner elects to be tried by jury.

(*g*) 3 & 4 Geo. 5, c. 28, s. 56.

(*h*) 1 & 2 Geo. 5, c. 28; 10 & 11 Geo. 5, c. 75.

(*i*) An appeal against a maintenance order lies not to Q.S. but to a Divisional Court of the High Court of Justice (Probate, Divorce, and Admiralty Division), and different rules and forms apply.

(*j*) 4 & 5 Geo. 5, c. 58, s. 37, sub-s. 1.

(b) Where the accused has pleaded guilty or admitted the truth of the information, an appeal will lie against sentence only (*k*).

Criminal Justice Act, 1925 (*l*).

(c) Written notice of intention to appeal must be served on the clerk of the Court of summary jurisdiction *and* on the opposite party within 7 days after conviction.
(d) Three days are allowed in which to fix recognisances.
(e) Appeal to Q.S. takes the form of a fresh trial before the Bench of Justices, each of which has a vote in determining the issue.
(f) Fresh evidence may be adduced on either side.
(g) Should the appeal fail, the appellant must pay the taxed costs.

(VIII) PETTY SESSIONS (*m*).

Composed of two or more J.P.s or a stipendiary magistrate (*n*) sitting in their usual Court House.

History of the Justices of the Peace.

(a) Certain landed gentry were from time to time appointed in the interests of the public safety to be "conservators of the Peace" apart from the petty local Courts.
(b) Before 1327 they were chosen by the freeholders of the county, but after that date by the Crown.
(c) In 1360 "Justices of the Peace" were appointed for each county to "preserve the peace of our Lord the King."
(d) Under Elizabeth the form of commission of justices of the peace was settled and has remained substantially the same.

JUSTICES OF THE PEACE TO-DAY.

(a) are appointed by the Crown on the recommendation of the Lord Chancellor and the Lord Lieutenant of the county (*o*);

(*k*) It would seem that a Court of Q.S. cannot increase a sentence.
(*l*) 15 & 16 Geo. 5, c. 86, s. 25.
(*m*) Inferior Courts not of record.
(*n*) Where a stipendiary or police magistrate has been appointed he may act with the full power of two J.P.s, as also may the Lord Mayor or any Alderman of the City of London.
(*o*) 11 & 12 Vict. c. 43, s. 11.

(b) are unpaid (*p*);
(c) hold office for life;
(d) may be removed by the Lord Chancellor for misconduct (*p*).

Jurisdiction.

(I.) Summary Jurisdiction.

(a) J.P.s have power to dispose of certain minor criminal offences summarily, *i.e.*, without a jury and without any indictment.

(b) The complaint must be laid within six months following the time when the matter arose.

Summary Jurisdiction Act, 1848 (*o*).

(II.) Power to Deal Summarily with Indictable Offences (*q*).

J.P.s have power to deal summarily with certain indictable offences if

(a) the Court considers it desirable, and
(b) the accused consents.

Criminal Justice Act, 1925 (*r*).

(III.) Preliminary Investigation.

(a) Persons charged with indictable offences appear before a J.P., who decides whether or not the case is one which may conveniently be dealt with summarily under the *Criminal Justice Act, 1925*, or whether it should be sent for trial by jury either at Assizes or at Quarter Sessions.

(b) If he decides that it is one which may conveniently be dealt with summarily, he asks the accused if he will consent to be dealt with summarily or if he wishes to be tried by a jury.

(c) If the accused elects to be dealt with summarily, the J.P. hears the evidence and disposes of the matter himself.

(d) If the accused elects to be tried by a jury or if the case is one which cannot be dealt with summarily, the J.P. hears the evidence and decides whether or not there is sufficient evidence for the case to be sent for trial at Assizes or Quarter Sessions.

(*p*) Except in the case of stipendiary police magistrates, who are appointed and may be removed by the Home Secretary.
(*q*) This is more fully dealt with in the next chapter.
(*r*) 15 & 16 Geo. 5, c. 86, s. 24.

DIFFERENCES BETWEEN A PRELIMINARY INVESTIGATION AND A SUMMARY TRIAL.

Preliminary Investigation.	*Summary Trial.*
(1)	
Accused either discharged or committed for trial in a superior Court.	Accused found either guilty or not guilty and convicted or acquitted accordingly.
(2)	
One J.P.	Two J.P.s (or one Stipendiary).
(3)	
Accused must be present.	Accused need not be present.
(4)	
Public may be excluded.	Public may not be excluded.
(5)	
May be held at any time and in any place.	Must be held at regular intervals and in a stated place.
(6)	
Depositions must be taken down in writing.	Depositions need not be taken down in writing.

Depositions.

(a) A deposition is the evidence of a witness taken down in writing and signed by him and by the magistrate.

(b) Depositions serve as official records of the oral evidence given by the witnesses when the facts are fresh in their memory.

(c) They are drawn up by the magistrate's clerk and sent to the Court of trial.

(d) Inform the accused as to the precise case which he has to meet and enable him to prepare his defence.

(e) Enable an indictment to be drawn by the clerk of the sessions.

(f) Enable the Judge to charge the grand jury and deal with any application.

(g) Check the evidence of any witness (if it varies from his deposition).

(h) Can be read at the trial if the witness is either
  (i) dead,
  (ii) insane,
  (iii) too ill to travel,
  (iv) kept away by the other side (*s*).

(*s*) The mere fact that he is absent is not sufficient to show that he is kept away.

(j) The deposition of a witness whose attendance at the trial is stated to be unnecessary may be read at the trial (*t*).
Criminal Justice Act, 1925 (*u*).

Juvenile Courts.

(a) Persons under 16 must not be tried in the ordinary Court House.
(b) No person other than the parties directly concerned in the case may be present without the leave of the Court (*x*).
(c) No person under 16 may be allowed to associate either before or after his appearance at Court with any adult offender who is not charged jointly with him.
Children Act, 1908 (*y*).

(IX) THE CORONER'S COURT (*z*).

Coroners Act, 1887 (*a*).

(1) Each county has a separate Coroner, as also has every county borough and every borough having a Court of Quarter Sessions.
(2) The object of this Court is to investigate, and if necessary to accuse, but not to try.
(3) If a Coroner's jury bring in a verdict which amounts to an accusation, a bill of indictment is thereupon preferred before a grand jury.
(4) The bill of indictment will state the charge + the finding of the Coroner's jury, *e.g.*, "manslaughter and finding of Coroner's inquisition on the like charge."

Functions.

(1) To inquire into the cause of death when anyone :—
  (a) dies in prison;
  (b) comes to a violent or unnatural death;
  (c) comes to a sudden death of which the cause is unknown.
(2) To inquire as to treasure trove :—
  (a) who were the finders;
  (b) who is suspected of concealing it.
(3) To inquire into the cause of fires in the City of London, whether accompanied by loss of life or not.

(*t*) If at a preliminary investigation the magistrate considers that the attendance of any witness at the trial is unnecessary, he can bind him over "conditionally," *i.e.*, to attend the trial only if notice is given him to do so : *C. J. A.*, *s.* 13, *sub-s.* 1.
(*u*) Section 13, sub-section 3 (a).
(*x*) The *bona fide* representatives of a newspaper may not be excluded.
(*y*) 8 Edw. 7, *c.* 67, *s.* 3.
(*z*) An inferior Court of Record. (*a*) 50 & 51 Vict. c. 17.

Procedure at a Coroner's Inquest.

(1) JURY SWORN.

(a) A Coroner's jury may consist of any uneven number of persons of not less than 7 and not more than 11. *Coroners Amendment Act, 1926* (*b*).

(b) If it appears to the Coroner that it is unnecessary to have a jury, he has the discretionary power of holding a Court without one.

Idem, section 3, sub-section 1.

(c) In cases of murder, manslaughter, infanticide, death in prison, asylum, inebriates' home or nursing home, he must summon a jury.

Idem, section 13, sub-section 2.

(d) The form of oath is as follows :—

"I will diligently inquire and a true presentment make of all such matters and things as are here given to me in charge on behalf of our Sovereign Lord the King touching (*the matter under investigation*), and will without favour, affection or ill will a true verdict give according to the evidence to the best of my skill and knowledge, so help me God."

(2) JURY ELECT A FOREMAN.

(3) VIEW OF THE BODY.

(a) The Coroner must view the body.

(b) The jury need not do so unless either the Coroner or a majority of their number think it advisable.

Idem, section 14, sub-section 1.

(c) Failure on the part of the Coroner to view the body will render the inquest a nullity.

(4) CORONER STATES THE FACTS TO THE JURY.

(5) WITNESSES ARE CALLED, SWORN AND EXAMINED.

(a) They are examined by the Coroner.

(b) He may ask questions in any form he chooses.

(c) The evidence of the witnesses is taken down in writing by the Coroner.

(d) These depositions are not as a rule admissible in any subsequent trial.

(e) But they may be admitted if the deponent is dead and if it can be proved that the person against whom

(*b*) 16 & 17 Geo. 5, c. 59, s. 30, & Sch. II, amending section 3, sub-section 1 of the *Coroners Act, 1887* (50 & 51 Vict. c. 71).

they are tendered was present at the inquest and had an opportunity of cross-examining the deponent.

R. v. *Cowle* (*c*).
R. v. *Black* (*d*).

(f) Counsel may attend on behalf of any witness, but may not ask questions without leave of the Coroner.

(6) Coroner Sums Up.

(7) Jury Consider Their Verdict.

(*c*) 71 J. P. 172.
(*d*) 74 J. P. 71.

CHAPTER II.

SUMMARY PROCEDURE.

(I) PETTY OFFENCES.

(a) Petty offences are minor criminal offences which are not indictable and which J.P.s have power to dispose of summarily (*a*).

(b) But where such offences are punishable on first conviction with more than three months' imprisonment, the accused may (except in case of petty assaults) claim to be tried by a jury.

(c) The J.P. should therefore inform the accused of this right *before taking any evidence*, and, if he sees fit, to which Court of Assize or Q.S. the accused is likely to be sent for trial.

(d) The following are the chief petty offences :—

(1) Petty forms of malicious damage.
(2) Cruelty to animals.
(3) Transgressions against bye-laws.
(4) Offences of vagrancy.
(5) Certain minor assaults (*b*).
(6) Violations of laws relating to
Game.
Intoxicating liquors.
Adulteration of food.
Revenue.
Public Health.
Education.

(II) JURISDICTION OF PETTY SESSIONAL COURTS OVER INDICTABLE OFFENCES.

By the Summary Jurisdiction Act, 1879 (*c*).

Petty Sessional Courts have power to deal with any indictable offence (except homicide) when committed by a child above 7

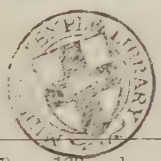
(*a*) For an explanation of the expression "summarily," see *ante*, page 75.
(*b*) *Offences against the Person Act, 1861* (24 & 25 Vict. c. 100), s. 42.
(*c*) 42 & 43 Vict. c. 49.

and under 14 if the parent or guardian consent to the child being so dealt with (*d*), or a young person under 16 if the accused consent to waive his right to trial by jury (*d*).

By the Criminal Justice Act, 1925 (*e*).

Petty Sessional Courts have power to deal summarily with the following indictable offences *if the accused consent to waive his right to trial by jury* (*f*) :—

(1) Damage to property under the *Malicious Damage Act, 1861, ss. 16, 20, 21 and 51.*
(2) Misdemeanours under the *Coinage Offences Act, 1861.*
(3) Unlawful wounding and assault occasioning actual bodily harm.
(4) Certain Post Office offences under the *Telegraph Act, 1868, s. 20,* and the *Post Office Act, 1908, ss. 50—56:*
—*e.g.*, Disclosing or intercepting telegrams.
Stealing and/or receiving a mail bag or postal packet.
Diverting, opening or delaying a mail bag or postal packet.
(5) Obtaining credit by fraud.
(6) Falsifying accounts.
(7) Certain offences as to stamps under the *Stamp Duties Management Act, 1891, s. 13,* and the *National Health and National Unemployment Insurance Acts, 1924, e.g.*, fraudulently printing, mutilating, selling or possessing any false representation of a stamp.
(8) Making a false statutory declaration under the *Perjury Act, 1911, s. 5.*
(9) Forging a valuable security or demanding property on forged documents, the value of the money or property in each case not to exceed £20.
Forgery Act, 1913, s. 2, sub-s. 2 (a).
(10) Forging a passport under the *C. J. A., 1925, s. 36, sub-s. 1.*
(11) Several offences under the *Larceny Act, 1916,* the chief of which are :—
Simple larceny.
Quasi larcenies.
Aggravated larcenies.
Larceny as a bailee.



(*d*) *Children Act, 1908* (8 Edw. 7, c. 67), s. 128, sub-s. 1.
(*e*) 15 & 16 Geo. 5, c. 86, Sched. II, to which the reader should refer.
(*f*) But nothing can deprive the accused of his right to be tried by a jury, and he cannot be dealt with summarily without expressly being asked if he consents and expressly so consenting.

Embezzlement.
Receiving stolen property.
Obtaining by False Pretences.

(12) Attempted suicide.
(13) Publishing indecent matter.
(14) Indecent assault on a young person under 16.
(15) Aiding, attempting or inciting the commission of any of the above offences.

HISTORICAL NOTE.

Before June 1, 1926, the power of Petty Sessional Courts to deal summarily with indictable offences was regulated by the *Summary Jurisdiction Act, 1879-1899*. They were only allowed to deal with

(1) Offences now regulated by the *Larceny Act, 1916*, provided the value of the property did not exceed £20.
(2) Setting fire to any wood or heath provided the damage did not exceed £20.
(3) Indecent assault on a young person under 16.
(4) Any of the offences referred to in (1) and (2) if the value of the property exceeded £20 provided the accused pleaded guilty, in which case he lost his right of appeal to Q.S.; if he pleaded not guilty, he had to be committed for trial.

(III) PROCEDURE AT A SUMMARY TRIAL.

(A) IF THE OFFENCE IS OF A MINOR CHARACTER (*g*).

(1) The magistrate's clerk states the charge to the accused and asks him whether he pleads guilty or not guilty; then :—

(a) If the accused pleads guilty—
(i) The police officer who arrested him briefly states the facts.
(ii) The magistrate asks the accused if he wishes to say anything.
(iii) The magistrate ascertains the previous record (if any) of the accused and passes sentence upon him.

(b) If the accused pleads not guilty—
(i) The police officer who arrested him briefly states the facts and calls his witnesses (if any).
(ii) The magistrate asks the accused :—
(a) if he has any questions to ask them;
(b) if he wants to give evidence and/or call any witnesses;

(*g*) *E.g.*, drunk and disorderly, begging, etc.

(c) if he has any statement to make.

(iii) The magistrate either discharges the accused or convicts him.

(iv) If he convicts, he ascertains the accused's character and passes sentence upon him.

(B) If the Offence is of a Serious Character (*h*).

(1) Prosecutor opens the case.

(2) Witnesses for the prosecution are called, examined and cross-examined.

(3) Accused gives evidence (if he wishes).

(4) Witnesses (if any) for the defence.

(5) Accused (or his representative) sums up the case for the defence.

(6) Magistrate either discharges the accused or convicts him.

(7) If he convicts, he ascertains the accused's previous character and passes sentence upon him.

(IV) PUNISHMENTS.

(1) In the case of offences under the *Larceny Act, 1916* :—

(a) If the value of the property stolen, etc., be under 40s. :—

Imprisonment (*i*) not exceeding 3 months and/or a fine not exceeding £20.

(b) If the value of the property stolen, etc., exceed 40s. :—

Imprisonment not exceeding 6 months and/or a fine not exceeding £100 (*k*).

(2) In the case of indecent assault upon a young person under 16 :—

Imprisonment not exceeding 6 months.

(3) In the case of a person summarily convicted under section 7 of the *Prevention of Crimes Act, 1871* (*l*) :—

Imprisonment not exceeding 12 months (*m*).

(4) Consecutive sentences of imprisonment may be passed, but the aggregate term must not exceed 6 months, unless such sentences include at least 2 sentences for indictable offences dealt with summarily, in which case the aggregate term must not exceed 12 months.

(*h*) *E.g.*, loitering with intent, assault.

(*i*) For the purposes of this paragraph, the word " imprisonment " means " imprisonment with or without H.L."

(*k*) *C. J. A.*, s. 24, sub-s. 1.

(*l*) 34 & 35 Vict. c. 112.

(*m*) The prisoner can elect to be tried by a jury and if he does so he will not be liable to a greater maximum punishment.

(5) In the case of a child :—
Imprisonment not exceeding 1 month or a fine not exceeding 40s. (*n*).

(6) In the case of a young person :—
Imprisonment not exceeding 3 months or a fine not exceeding £10.

(7) In the case of a male child under 14 years of age, a number of strokes (not exceeding 6 (*o*)) with a birch-rod may be ordered in substitution for or in addition to any other punishment that may be ordered.

(*n*) *Summary Jurisdiction Act, 1879* (42 & 43 Vict. c. 49), s. 10, sub-s. 1 (b) and (c).

(*o*) *Id.*, s. 10, sub-s. 1 (d).

CHAPTER III.

ORDINARY PROCEDURE.

STEPS IN THE TRIAL OF A CRIMINAL ACTION.

I. Information.
II. Arrest.
III. Commitment for Trial.
IV. Prosecution.
V. Arraignment.
VI. Plea.
VII. Jury sworn.
VIII. Witnesses and speeches of counsel.
IX. Summing-up and verdict.
X. Proceedings after verdict.
XI. Sentence.
XII. Appeal.
XIII. Respite, reprieve or pardon.

(I) INFORMATION.

(1) Laid before a J.P.
(2) By any person aware of the facts.
(3) If not in writing and not upon oath a warrant cannot be issued; only a summons.

Specimen Information.

Metropolitan Police District to wit.
The Information and Complaint of :—
and the Deposition(s) of :—
in support thereof taken on oath this ( ) day of ( ) 1929 at the ( ) Police Court before me the undersigned one of the Magistrates of the Police Courts of the Metropolis sitting at the Police Court aforesaid upon an application for a Summons or Warrant against *A B* to answer a charge for that he on the ( ) day of ( ) *feloniously did kill and slay one C D against the peace of our Lord the King his Crown and dignity*;
and this Deponent *X Y* upon his oath saith :—

Summons.

(a) A document directed to the accused.
(b) Issued by a magistrate.
(c) Stating the charge.
(d) Ordering him to appear before the magistrate.
(e) At a certain time and place.
(f) Served by a constable on the accused personally; or
(g) Delivered at his last place of abode.

Specimen Summons.

In the Metropolitan Police District.
To :—*A B.*
of :—

Information has been laid this day by *X Y* of ( ) for that you on the ( ) day of ( ) 1929 at ( ) *feloniously did kill and slay one C D against the peace of our Lord the King his Crown and dignity.*
You are therefore hereby summoned to appear before the Court of Summary Jurisdiction sitting at the ( ) Police Court on the ( ) day of ( ) 1929 at the hour of ( ) in the ( ) noon to answer to the said complaint.
Dated the ( ) day of ( ) 1929.

[*Magistrate's signature.*]

Warrant.

(a) A document directed to a constable.
(b) Issued
  (i) in cases of political crimes, by a Secretary of State or a Privy Councillor;
  (ii) in ordinary criminal cases, by a Judge of the K.B.D. or a J.P.
(c) Stating the offence.
(d) Indicating the offender.
(e) Ordering the constable to bring him before the magistrate.
(f) Remaining in force until executed.

Specimen Warrant.

In the Metropolitan Police District.
To each and all of the Constables of the said district :—
Information on oath has been laid this day by *X Y* of ( ) that *A B* of no fixed abode (hereinafter called the Defendant) on the ( ) day of ( ) 1929 at ( ) *feloniously did kill and slay one C D against the peace of our Lord the King his Crown and dignity.* You are

therefore hereby commanded to bring the Defendant before the Court of Summary Jurisdiction sitting at the ( ) Police Court forthwith to answer to the said Information.

Dated the ( ) day of ( ) 1929.

[*Magistrate's signature.*]

(II) ARREST.

(A) With a Warrant.

(1) The warrant is the written authorisation of arrest.

(2) The constable executing the arrest need not have the warrant in his possession at the time, but it must be shown to the prisoner as soon as practicable after his arrest (*a*).

(3) He may break open outer doors of a house if necessary.

(4) If the charge be one of treason, felony, or dangerous wounding, he may use whatever force may be necessary.

(B) Without a Warrant.

(1) By a Private Person.

(a) Any person seen committing a treason, felony, or dangerous wounding.

(b) Any person reasonably suspected of having committed any such crime which has actually been committed.

(c) Any person found

(1) Signalling to smugglers (*b*), or

(2) Offending against the

Vagrancy Act (*c*).

Larceny Act, 1916 (*d*).

Coinage Offences Act (*e*).

(d) If the owner permits arrest :—

Any person offending against the

Malicious Damage Act, 1861 (*f*).

Night Poaching Act (*g*).

Town Police Act (*h*).

Metropolitan Police Acts (*i*).

(e) Any person committing by night any indictable offence.

(*a*) *C. J. A.*, s. 44.
(*b*) 39 & 40 Vict. c. 36, s. 190.
(*c*) 5 Geo. 4, c. 83, s. 6.
(*d*) 6 & 7 Geo. 5, c. 50, s. 41, subs. 1.
(*e*) 24 & 25 Vict. c. 99, s. 1.
(*f*) 24 & 25 Vict. c. 97, s. 61.
(*g*) 9 Geo. 4, c. 69, s. 2.
(*h*) 10 & 11 Vict. c. 89, s. 15.
(*i*) 2 & 3 Vict. c. 47, s. 66, and c. 71.

(2) By a Police Constable.

(a) As in (1) (a).

(b) As in (1) (b), but also if the crime has not actually been committed.

(c) As in (1) (c).

(d) As in (1) (d), but also without owner's permission.

(e) As in (1) (e).

(f) Any person committing a breach of the peace.

(g) Any person loitering suspiciously at night.

(h) In London :—

(1) Any person reasonably suspected of committing or being about to commit an indictable crime.

(2) Any person loitering at night and unable to give a satisfactory account of himself.

(III) COMMITMENT FOR TRIAL.

Procedure at the Preliminary Investigation before a Magistrate.

Criminal Justice Act, 1925 (*j*).

(1) Prosecutor opens the case.

(2) Witnesses for the prosecution called and their evidence taken down in writing, read over to them and signed by them and by the magistrate.

(3) Prosecutor sums up (*k*).

(4) Magistrate reads the charge to the accused and explains it to him in ordinary language.

(5) Magistrate informs the accused that he has the right to call witnesses and if he so desires to give evidence on his own behalf.

(6) Magistrate asks the accused if he wishes to say anything in answer to the charge (*l*).

(7) If the accused makes any statement (*e.g.*, "I plead not guilty") it is taken down in writing, read over to him, signed by the magistrate and by the accused himself if he so desires (*m*).

(8) Magistrate asks the accused whether he desires to give evidence on his own behalf and whether he desires to call any witnesses.

(*j*) 15 & 16 Geo. 5, c. 86, s. 12.

(*k*) This is seldom done.

(*l*) The proper form of question is as follows: "Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing and may be given in evidence upon your trial."

(*m*) This statement, whether signed by the accused or not, may be given in evidence at the trial, unless it has not actually been signed by the magistrate.

(9) *Courses open to the accused:—*

(i) Reserve his defence, *i.e.*, give no evidence himself and call no witnesses.
(ii) Give evidence himself and call no witnesses.
(iii) Give evidence himself and call witnesses.
(iv) Call witnesses but give no evidence himself.

(10) *Speech by the accused's representative* (*n*).

(a) If the accused gives no evidence and calls no witnesses, his representative may address the Court on his behalf and may submit that there is no case to answer.
(b) If the accused gives evidence and calls no witnesses, at the conclusion of such evidence his representative may address the Court on his behalf.
(c) If the accused calls witnesses (whether he gives evidence himself or not), his representative must (if he wishes so to do) address the Court before such evidence is given.

(11) Any evidence given by the accused and/or by his witnesses shall be taken down in writing, read over to them and signed by them and by the magistrate.

(12) The magistrate then decides

(a) Whether there is a strong enough case to send the accused to trial,
(b) If so, where the trial shall be,
(c) Whether he will allow bail.

Bail.

(a) An accused person is said to be "admitted to bail" when he is released from the custody of the officers of the law and entrusted to the custody of persons known as his sureties, who enter into recognisances to produce him to answer at a specified time and place the charge against him and who, in default of so doing, are liable to forfeit such sum as is specified when the bail is granted.

(b) (1) Never allowed in cases of treason and murder.
(2) May be allowed in felonies and graver misdemeanours.
(3) Must be allowed in lesser misdemeanours.

(c) Where a Court of summary jurisdiction commits for trial a person charged with any misdemeanour and does not admit him to bail, the Court must inform the accused of his right to apply for bail to a Judge of the K.B.D.
Criminal Justice Administration Act, 1914 (*o*).

(*n*) The expression "representative" means either counsel or solicitor representing the accused.
(*o*) 4 & 5 Geo. 5, c. 58, s. 23.

Continuous Bail.

(a) During the hearing of a charge before a magistrate, the accused may be remanded from time to time until the whole of the evidence has been heard.

(b) If the accused is admitted to bail, it will be necessary for his surety to be present at each hearing in order to renew the bail.

(c) To avoid putting the surety to this trouble, the magistrate may make the bail "continuous," *i.e.*, continuing until the whole of the evidence has been heard.

(d) At the last hearing, if the magistrate commits the accused for trial, the surety must be present and bail will be granted until the date of trial.

Recognisance.

A recognisance is a contract of record whereby the person bound acknowledges himself to be indebted to the King in a certain sum, to be levied on his goods and chattels, lands and tenements, if he fail in the condition specified in the recognisance.

(a) If the condition be performed, the recognisance becomes void.

(b) If it be broken, the recognisance may, by order of the Court, be forfeited and estreated, and the person bound and his sureties (if any) become absolute debtors to the Crown for the sum named, which will then be levied by the sheriff.

When Recognisances may be Required.

(1) In the case of conviction for an indictable misdemeanour punishable under the *Criminal Consolidation Acts, 1861*, *Forgery Act, 1913*, and *Larceny Act, 1916*, in lieu of, or in addition to, any other punishment.

(2) In the case of felony (except murder) punishable under those Acts in addition to any other punishment.

(3) Independently of any statute, in the case of any conviction for an indictable misdemeanour, defendant may be ordered to enter into a recognisance to keep the peace and be of good behaviour for a reasonable time, and in default he may be committed to prison.

(4) They may also be required :—

(i) From the prosecution and witnesses

(a) Upon committal of a person for trial upon an indictable offence,

(b) Where under the *Vexatious Indictments Act, 1859* (*p*), the prosecutor has been bound over to prosecute.

(ii) Under the *Probation of Offenders Act, 1907* (*q*).

(iii) From the appellant.
(a) On appeals to Q.S.
(b) Where J.P.s state a case.

(iv) From a person admitted to bail.

(v) From a person who appeals to the C.C.A. where a fine only has been inflicted (*r*).

(vi) By a Court of summary jurisdiction as a preventive measure.
Summary Jurisdiction Act, 1879 (*s*).

(IV) PROSECUTION (*t*).

Formal accusation may be made either
(a) upon a presentment by a grand jury, or
(b) without such presentment.

(A) INDICTMENT.

(a) A written accusation charging a definite person with the commission of a definite crime with a view to his being tried on that charge at Assizes or Q.S.

(b) It is the usual form of prosecution.

(c) It must state :—
(1) Name of the prisoner.
(2) Name of the Court in which he is to be tried.
(3) Specific charge (quoting statute if a statutory offence).
(4) Particulars of the offence, *e.g.*, date, property, owner, etc.
(5) Previous convictions (if any).

(d) It is usually prepared by the clerk of assize or the clerk of the peace at Q.S., but in certain cases counsel may receive instructions to settle the indictment.

(e) The Counts of an Indictment.
(1) An indictment may contain several counts.
(2) This may be done either

(*p*) 22 & 23 Vict. c. 17.
(*q*) 7 Edw. 7, c. 17.
(*r*) Criminal Appeal Rules, 1908, rule 7.
(*s*) 42 & 43 Vict. c. 49, s. 25.
(*t*) The expression "prosecution" usually signifies the whole of the proceedings for bringing an offender to justice, but it is here used in the special sense of "manner of formal accusation."

(i) to charge distinct offences committed at different times or by different acts; or
(ii) to charge the same act as constituting two different offences.

(3) More than one offence cannot be charged in one count or the count will be bad for duplicity.
(4) But different acts which form part of a single transaction may be charged in one count.
(5) In indictments for burglary the prisoner is usually charged in one count with having broken and entered a house with intent to commit a felony therein and with having committed the felony (*u*).
(6) Two or more offences may be charged in different counts in the same indictment; but no count for any other felony can be added to an indictment for treason or murder.
(7) Two persons can be charged in the same indictment if
(i) Their crime be a joint one,
(ii) The facts on which the charges are founded form part of the same transaction.
(8) The misjoinder of defendants may be made the subject of :—
(i) Demurrer (*x*).
(ii) Motion to quash the indictment (*x*).
(iii) Motion in arrest of judgment (*y*).
(iv) Appeal (*z*).

The Grand Jury.

An indictment is only a "bill of indictment" until it has been found "true" by the grand jury.

(a) The grand jury consists of not less than twelve and not more than twenty-three persons of good standing in the county.

(b) Charging the Grand Jury.
(i) The attention of the grand jurors is directed to important points in the cases for their consideration.
(ii) The object of this is to assist them in coming to a correct conclusion.
(iii) It is done by :—
The Judge at Assizes.
The Recorder of London at the C.C.C.
The Chairman at County Sessions.
The Recorder at Borough Sessions.

(*u*) See the form of an indictment, *post*, page 95.
(*x*) See *post*, page 97.
(*y*) See *post*, page 105.
(*z*) See *ante*, page 67, and *post*, page 109.

(c) After being charged, the grand jury retire in order to hear the witnesses for the prosecution and consider the various bills of indictment.
(d) If at least twelve consider that a fair case is made out, the words "True Bill" are indorsed on the bill; otherwise, the words "No True Bill" are so indorsed.
(e) When one or more bills are found, some of the grand jury come into Court and hand them to the clerk, who reads out the finding.
(f) When all the bills have been found, the grand jury are discharged by the presiding Judge.
(g) The *C. J. A.*, s. 19, gives power to Q.S. to dispense with grand jurors where all persons committed there for trial have already pleaded guilty.

The Vexatious Indictments Act, 1859 (*a*).

(a) No bill of indictment for certain specified offences shall be presented to or found by a grand jury unless one of the following steps has been taken :—
  (1) The prosecutor has been bound by recognisances to prosecute.
  (2) The accused has been committed to custody or released on bail.
  (3) The indictment has been preferred with the written consent of a Judge of the High Court or the Attorney- or Solicitor-General.
(b) The object of this Act is to prevent an indictment being maliciously preferred to the grand jury against an innocent man.
(c) The offences specified include :—
  Conspiracy.
  False pretences.
  Indecent assault.
  Incest.
  Libel under the *Newspaper Libel and Registration Act, 1881* (*b*).
  Obtaining credit by fraud.
  Perjury.
  Sexual offences under the *Criminal Law Amendment Act, 1885* (*c*).
(d) If a magistrate refuses to commit for trial a person charged with any offence to which this Act applies, the prosecutor may require him to take his recognisance to prosecute the accused. The magistrate must then transmit the recog-

(*a*) 22 & 23 Vict. c. 17.
(*b*) 44 & 45 Vict. c. 60, s. 6.
(*c*) 48 & 49 Vict. c. 69, s. 17.

nisance with the information and depositions to the Court in which the indictment ought to be preferred, and it may then be preferred in spite of the magistrate's refusal to commit (*d*).

Changes made by the Indictments Act, 1915 (*e*).

(1) Every indictment shall contain, and shall be sufficient if it contains, a statement of the specified offence or offences with which the accused is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the charge (*f*).

(2) (a) The indictment may be on parchment or paper (of a specified size) and may be written, printed or partly written and partly printed.
(b) Figures and abbreviations may be used.
(c) The names of the witnesses for the prosecution should be indorsed on the back.

Rule I (*g*).

(3) A plurality of counts is only permitted when all are founded on the same facts or form or are part of a series of offences of the same or a similar character.

(4) Whenever a joinder of charges is permissible, the old prohibition against joining felonies and misdemeanours is removed (*h*).

(5) The statement of offence and the particulars of it must use ordinary language, avoiding technical terms as far as possible (*i*).

(6) If the offence be a statutory one, the statute and the particular section must be specified in the indictment.

(7) In the case of any statutory offence which is defined by alternatives a count may now allege the different alternatives which the defining statute sets out (*k*).

(8) In stating the particulars of offence, the precision formerly required is relaxed in that all the essentials of the offence need not be set out.

(9) The Court has power, either before trial or at any stage of the trial, to amend an indictment if the Court considers that

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(*d*) This does not apply where the magistrate has refused to grant a summons.
(*e*) 5 & 6 Geo. 5, c. 90.
(*f*) Section 3.
(*g*) No indictment shall be open to objection by reason only of failure to comply with this rule.
(*h*) Section 4 and rule 3.
(*i*) Rule 4 (2) (3).
(*k*) Rule 5.

(a) the indictment is defective;
(b) it is necessary to amend it to meet the circumstances of the case;
(c) no injustice will be done by making any amendment (*l*).

(10) If the Court considers that a prisoner may be prejudiced or embarrassed in his defence by reason of his being charged with more than one offence in the same indictment, it may order a separate trial of any count or counts in an indictment (*m*).

(11) It is the duty of the clerk of the Court, after a true bill has been found on any indictment, to supply to the prisoner on request a copy of the indictment free of charge (*n*).

Form of an Indictment (*o*).

CENTRAL CRIMINAL COURT (*p*).

THE KING *v.* A B.

PRESENTMENT OF THE GRAND JURY.

A B is charged with the following offences :—

FIRST COUNT.

STATEMENT OF OFFENCE.

Burglary and Larceny contrary to section 25 of the *Larceny Act, 1916.*

PARTICULARS OF OFFENCE.

A B in the night of the 5th day of March, 1922, in the city and county of London, with intent to steal, broke and entered the dwelling-house of C and stole therein a gold watch his property value £30.

SECOND COUNT.

STATEMENT OF OFFENCE.

Receiving stolen goods contrary to section 33 of the *Larceny Act, 1916* (*q*).

(*l*) Section 5. (*m*) Section 5, sub-section 3.
(*n*) Rule 13.
(*o*) As prescribed by the Rules in the *Indictments Act, 1915.*
(*p*) Or whatever the Court of trial may be, *e.g.*, " Essex County Quarter Sessions held at Chelmsford," " Colchester Borough Quarter Sessions," " Kent Assizes held at Maidstone."
(*q*) In indictments charging offences of stealing, it is usual to add a count for receiving, so that in the event of there not being sufficient evidence that the prisoner actually *took* the article in question, he may be convicted of " receiving " it.

PARTICULARS OF OFFENCE.

A B on the 6th day of March, 1922, in the city of London, received the said watch well knowing it to have been stolen.

[Previous convictions (if any) (*r*).]

[A B is an habitual criminal.]

(B) CRIMINAL INFORMATION.

(a) A written complaint made on behalf of the Crown by one of its officers and filed in the K.B.D. in respect of some offence not a felony whereby the offender is brought to trial without a previous finding by a grand jury.

(b) Informations are of two kinds :—

(1) Informations *ex officio* filed by the Attorney-General.

(2) Informations by the Master of the Crown Office filed by him at the instance of some private individual (called the *Relator*).

(c) Informations differ from indictments in the following particulars :—

(1) No preliminary investigation before a magistrate.
(2) No presentment by a grand jury.
(3) Only for misdemeanour.
(4) Cannot be tried at Q.S.
(5) Tried on the civil side of the Court.

Form of a Criminal Information (*s*).

THE KING *v.* A B.

IN THE HIGH COURT OF JUSTICE, KING'S BENCH DIVISION.

CRIMINAL INFORMATION FILED BY THE KING'S ATTORNEY-GENERAL (*t*).

A B is charged with the following offences :—

STATEMENT OF OFFENCE.

(The remainder is similar to the form of an indictment.)

(V) ARRAIGNMENT.

Consists of :—

(1) Calling the prisoner by name to the bar of the Court.
(2) Reading the indictment to him.
(3) Asking him whether he is guilty or not of the offence charged.

(*r*) *E.g.*, "A B has been previously convicted of felony, to wit, burglary at the Essex Assizes on May 13, 1915."

(*s*) As prescribed by the *Indictments Act, 1915*.

(*t*) Or "by the master of the Crown Office at the instance of C D."

(VI) COURSES OPEN TO THE ACCUSED.

(1) Stand Mute.

(a) "Of malice."

In which case a plea of "not guilty" will be entered for him (*u*).

(b) "By visitation of God" (*v*).

In which case the Court will endeavour to make him understand the charge, and answer to it by other means; if these fail, a plea of "not guilty" will be entered for him.

(2) Demur.

(a) A "demurrer" is a written objection in which the prisoner admits the facts alleged against him, but denies that they amount to the crime charged in the indictment.

(b) It should be made before plea, but the Court may allow a plea to be withdrawn in order that the prisoner may demur.

(c) A prisoner rarely demurs, since if his demurrer fails he cannot then plead "not guilty," for he has admitted the facts.

(d) But the Court may allow him to "plead over," *i.e.*, put in a plea of "not guilty" and be tried on the indictment, even though the demurrer has failed.

(e) FORM (*x*) :—

Central Criminal Court.

The King v. *A B.*

A B says that the Indictment is not sufficient in law and that he is not bound by law to answer it.

(f) Issue is then joined by the Crown in the following form :

Central Criminal Court.

The King v. *A B.*

C D (Clerk of the Court) joins issue on behalf of the King.

(3) Move to Quash the Indictment.

If an indictment is defective, the accused may move to quash it.

(*u*) 7 & 8 Geo. 4, c. 28.

(*v*) If it is doubtful whether the muteness be "of malice" or "by visitation of God," a jury of any 12 persons present may be sworn to discover this.

(*x*) As prescribed by the *Indictments Act, 1915*.

(a) If the defect is merely formal, the motion should be made before plea, and the defect may then be amended by the Court.
(b) If the defect is a substantial one, the motion may be made after plea.
(c) Objection to an indictment for a crime of enormity should be taken on motion in arrest of judgment (*y*).
(d) If the indictment is clearly bad, the Court may quash it; but if there is any doubt, the Court will refuse to quash it, and the accused's remedies then are by demurrer, motion in arrest of judgment, or appeal.

(4) Plead to the Jurisdiction of the Court.

(a) The prisoner may contend that the Court :—
(i) Is not competent to try the crime charged; or
(ii) Has no jurisdiction over him or over the place where the crime was committed (*z*).
(b) Form (*a*).

Central Criminal Court.

The King v. *A B.*

A B says that the Court ought not to take cognisance of the indictment against him because [*state the reason*].
(c) Issue is joined on behalf of the Crown in a form similar to the joinder of issue to a demurrer.

(5) Plead specially in Bar.

(A) Pardon.
(B) Autrefois acquit.
(C) Autrefois convict.
(a) The principle upon which the right to plead (B) or (C) depends is that a man should not be put in peril twice for the same offence.
(b) If therefore a man has been tried and found to be not guilty of an offence by a Court competent to try him, the acquittal is a bar to a second indictment for the same offence.
(c) Similarly if a man has been tried, convicted and sentenced for an offence by a Court competent to try him, the conviction is a bar to a second indictment for the same offence.

(*y*) See *post*, page 105.
(*z*) It is submitted that since the wide alterations in *venue* made by the *Criminal Justice Act, 1925*, this latter objection could seldom be taken.
(*a*) As prescribed by the *Indictments Act, 1915*.

(d) To succeed on either (B) or (C) he must prove :—
  (1) That the facts alleged to constitute the offence charged are the same as those for which he was previously tried and acquitted (or convicted).
  (2) That he was in jeopardy.
  (3) That the previous verdict was a final one.

(e) Therefore a dismissal of a charge by a magistrate at a preliminary investigation cannot be pleaded as autrefois acquit should the prisoner be re-arrested and charged with another offence on the same set of facts or on fresh evidence.

(f) Form.

Central Criminal Court.

The King v. *A B.*

A B says the King ought not further to prosecute the indictment against him because he has been lawfully acquitted (or convicted) of the offence charged therein.

(6) Plead "Guilty."

The Court will then :—
(i) Hear the facts of the case from counsel for the prosecution.
(ii) Hear anything the police may have to say about the prisoner.
(iii) Hear any statement the prisoner or his counsel may wish to make in mitigation of sentence.
(iv) Pass sentence.

(7) Plead to the General Issue, i.e., Plead "Not Guilty."

The trial then proceeds.

Alteration of Plea.

(a) A prisoner who has pleaded guilty and been sentenced cannot retract his plea and plead not guilty.
(b) If a prisoner pleads guilty to a capital charge, the Court usually advises him to withdraw his plea and plead not guilty.
(c) A prisoner who has pleaded not guilty may, by leave of the Court, withdraw his plea and plead guilty.

(VII) SWEARING OF THE JURY.

(a) The prisoner is entitled to object or challenge one or more of the persons returned to be jurors.

(b) He is informed by the clerk of the Court of this right, and is told that "if he wishes to object to any of them he must do so as they come to the book to be sworn and before they are sworn and he shall be heard."

Challenges to Jurors.

Challenges to jurors may be made :—
(a) On behalf of the Crown.
(b) On behalf of the prisoner.

(I) Challenge to the Array.

An exception to the whole jury in respect of some default or partiality of the sheriff
(a) must specify the grounds upon which it is made;
(b) must be in writing.

(II) Challenge to the Polls.

An exception to particular jurors.

(1) PEREMPTORY.
(a) No cause need be shown.
(b) Only allowed in trials for treason or felony.
(c) Restricted to 35 jurors in treason and 20 in felony.

(2) PROPTER HONORIS RESPECTUM.
For the fact that a person has been empanelled who ought not so to have been, *e.g.*, a peer or member of the Bar.

(3) PROPTER DEFECTUM.
For some want or defect in the juror, *e.g.*, a lunatic.

(4) PROPTER AFFECTUM.
For suspicion of partiality.
(a) *Principal Challenge.*
e.g., juror is a relation to either party.
(b) *Challenge to the Favour.*
Where there is a possibility of bias.

(5) PROPTER DELICTUM.
For some crime committed by a juror.

(VIII) ORDER OF SPEECHES.

(A) WHEN THE PRISONER IS NOT DEFENDED BY COUNSEL AND CALLS NO WITNESSES TO THE FACTS EXCEPT HIMSELF.
(1) Counsel for the prosecution opens his case.
(2) Witnesses for the prosecution are called and examined, cross-examined, and (if necessary) re-examined.

(3) Counsel for the prosecution reads the replies given by the prisoner in answer to the two statutory cautions given him by the magistrate (*b*).
(4) Prisoner gives evidence (if he wishes) (*c*).
(5) Witnesses (if any), as to prisoner's good character.
(6) Prisoner makes a speech in his defence.

(B) When the Prisoner is not Defended by Counsel, but calls Witnesses as to the Facts, in addition to Giving Evidence Himself.
(1), (2) and (3) as in (A).
(4) Prisoner opens his case (*d*).
(5) Prisoner calls his witnesses as to fact and (if any) as to his good character.
(6) Prisoner sums up his case.
(7) Counsel for the prosecution replies on the whole case (*d*).

(C) When the Prisoner is Defended by Counsel who calls no Witnesses as to the Facts except the Prisoner.
(1), (2) and (3) as in (A).
(4) Prisoner gives evidence (if he wishes) (*c*).
(5) Witnesses (if any) as to prisoner's good character.
(6) Counsel for the prosecution sums up his case (*e*).
(7) Prisoner's counsel speaks in his defence.

(D) When the Prisoner is Defended by Counsel who calls other Witnesses to the Facts besides the Prisoner.
(1), (2) and (3) as in (A).
(4) Prisoner's counsel opens the defence.
(5) Prisoner gives evidence (if he wishes) (*c*).
(6) Witnesses for the defence (including witnesses, if any) as to prisoner's good character.
(7) Prisoner's counsel sums up the case for the defence.
(8) Counsel for the prosecution replies on the whole case.

Points to note.

(a) The prosecution has the last word when witnesses to the facts (other than the prisoner) are called by the defence; but it is sometimes waived, particularly if the prisoner is not represented by counsel.
(b) The Attorney-General and Solicitor-General always have the right of reply.

(*b*) *E.g.*, "In answer to the statutory caution, the prisoner said 'I reserve my defence' and in answer to the question as to whether he desired to call witnesses or to give evidence himself, he said 'No, sir.'"
(*c*) It is entirely within the discretion of the prisoner whether or not he will go into the witness-box and give evidence on his own behalf.
(*d*) This is seldom done.
(*e*) This is often waived.

(c) The wife of a prisoner counts as an ordinary witness, and if she is called on behalf of the defence, the prosecution will be entitled to the last word.

(d) A document or article put in by the defence as an "exhibit" counts as a witness and will entitle the prosecution to the last word.

(e) Failure of any prisoner (or the spouse of any prisoner) to give evidence in the witness-box may not be made the subject of any comment by counsel for the prosecution, but the Judge may comment upon it if he think fit.

*

Legal Aid for Poor Prisoners.

I. Under the Poor Prisoners Defence Act, 1903 (*f*).

(1) A prisoner may have solicitor and counsel assigned to him at the expense of the State upon the following conditions :—

(a) He has raised a defence at the Police Court by one or more of the following—

(i) cross-examination;

(ii) giving evidence himself on his own behalf;

(iii) calling witnesses as to facts on his behalf.

(b) He satisfies the Court that his means are insufficient to enable him to obtain legal assistance in the ordinary way.

(2) A prisoner may apply for legal aid under the statute either at the Police Court or at the Court of trial.

(3) It may be granted either by the committing magistrate or by the Judge (*g*) at the Court of trial.

(4) If granted by the Judge, solicitor and counsel will generally be assigned if the prisoner desires to call any witnesses; otherwise counsel alone will generally be considered sufficient.

(5) Under regulations made by the Secretary of State, 1928, the following fees may be allowed to solicitor and counsel respectively to whom the defence of a poor prisoner is assigned :—

	Solicitors.			Counsel.		
	£	s.	d.	£	s.	d.
(a) For a plea of guilty ...	2	2	0	2	4	6
(b) For a contested case ...	3	3	0	3	5	6

(*f*) 3 Edw. 7, c. 38.

(*g*) Includes Chairman of Quarter Sessions and Borough Recorder.

	Solicitors. £ s. d.	Counsel. £ s. d.
(c) If the Judge certifies that the contested case was one of exceptional length or difficulty, the fee may be increased to such sum as he may think fit, but not exceeding	5 0 0	11 0 0

II. At the Request of the Judge.

(a) Quite apart from the statute, where a prisoner is not represented by counsel, even if no defence has been raised at the Police Court, the Judge may request some member of the Bar present to represent the prisoner, if the prisoner consent to be so represented.

(b) This may be done in cases of grave crime or exceptional difficulty in which it appears to the Judge that it is desirable that the prisoner should be represented.

III. The "Dock Brief."

(a) It is a custom of long standing that a prisoner who can pay a fee of £1 3s. 6d. is entitled to choose any counsel present in Court, and on payment of that fee to have the services of the counsel so chosen.

(b) Such counsel must be fully robed and present in Court at the time the prisoner makes his application.

(c) The prisoner must make his selection personally and not by name.

(d) Counsel so chosen is not entitled to refuse his services.

(IX) SUMMING-UP AND VERDICT.

(A) The Judge Sums Up.

(1) The Judge lays down the law.

(2) He leaves all questions which arise upon the evidence to the jury.

(3) He may express an opinion as to the facts, but the jury are not bound to follow it.

(B) The Jury consider their Verdict.

(a) They may find the prisoner

(1) Guilty on the whole indictment.

(2) Guilty on some counts but not on others.

(3) Guilty of the minor offence (although not made the subject of a count in the indictment) (*h*).

(*h*) *E.g.*, on an indictment for unlawful wounding, prisoner may be found

(4) Guilty of the attempt.
(5) Guilty but insane (*i*).
(6) Guilty but with a recommendation to mercy.
(7) Not guilty.

(b) They may also return a "special verdict," *i.e.*, on the facts alone; the Court will then draw the legal inference from those facts, *e.g.*, whether they amount to murder or manslaughter.

(c) The verdict must be unanimous:

(i) If the jury cannot agree upon their verdict, they will be discharged by the Judge and the prisoner will be tried a second time at the next sessions by another jury.

(ii) In the event of a second disagreement taking place, it is usual for the prosecution to offer no further evidence and for the prisoner to be discharged.

(iii) If in the course of a trial any member of the jury dies, or is discharged by the Court, *e.g.*, for illness, the jury shall be deemed to remain properly constituted for that trial provided:—

(a) both the prosecution and the defence consent in writing, and

(b) the number of the jury is not reduced below ten (*j*).

(X) PROCEEDINGS AFTER A VERDICT OF "GUILTY."

(1) Evidence of previous convictions.
(2) Evidence as to prisoner's character.
(3) Evidence that the prisoner is an habitual drunkard.
(4) Plea in mitigation of sentence.
(5) Costs (usually paid by borough or county; prisoner pays his own).
(6) Damages.
(7) Restitution of goods.

(a) If a thief be prosecuted to conviction, the property in the goods stolen, even if it has passed from the owner, revests in him, and the Court may order the restitution of the property in a summary manner (*k*).

"not guilty of unlawful wounding but guilty of common assault." See *ante*, page 40.

(*i*) This is an acquittal and not a conviction; therefore the prisoner cannot appeal: *R.* v. *Felstead* (1914), 10 Cr. App. R. 129.

(*j*) *C. J. A.*, s. 15. (*k*) *Larceny Act, 1916* (6 & 7 Geo. 5, c. 50), s. 45.

(b) Where goods have been obtained by wrongful means not amounting to larceny, the property in them shall not revest in the owner by reason only of the conviction of the offender (*l*).

(8) Motion in arrest of judgment.

(a) Can only be made for some defect apparent on the face of the record.

(b) The objection must be substantial.

(c) Judgment will not be arrested if the defect has been amended during the trial.

(d) If judgment is arrested, the prisoner is discharged; but he may be indicted again on the same facts.

(XI) SENTENCE.

Judges have no power to create new forms of punishment.

Forms of Punishment.

(1) **Death.**

(a) Practically restricted to cases of murder (*m*).

(b) may not be inflicted on

(i) any one under 16;

(ii) any one insane;

(iii) a woman who is pregnant.

(2) **Penal Servitude.**

(a) For not less than three years.

(b) May not be inflicted on any one under 16.

(3) **Imprisonment.**

(a) For not more than two years (*n*).

(b) With or without hard labour.

(c) May not be inflicted on any one under 14.

(*l*) *Sale of Goods Act, 1893* (56 & 57 Vict. c. 71), s. 22, re-enacted by the *Larceny Act, 1916*, s. 45.

(*m*) Technically exists in cases of treason, arson and piracy.

(*n*) A prisoner convicted on an indictment containing more than one count for offences for which the maximum sentence is two years' imprisonment, may be sentenced to the maximum term of imprisonment on each count, since each count is a separate offence: *R.* v. *Hayley Morris*, 19 Cr. App. Rep. 75; and by the *Penal Servitude Act, 1926* (16 & 17 Geo. 5, c. 58). "Where a person is convicted on indictment of two or more offences punishable only by imprisonment in respect of which he is liable to be sentenced to terms of imprisonment amounting in the aggregate to a period of not less than three years, the Court may, instead of sentencing him to imprisonment, sentence him to penal servitude for any term not exceeding the aggregate period for which he might have been sentenced to imprisonment, but in any case not exceeding seven years."

(4) **Detention.**

(A) *For juvenile offenders.*

(1) Industrial School.
(Under 12 years of age.)

(2) Reformatory School.
(12-16 years of age.)

(3) Borstal Institution.
(16-21 years of age.)
(For not more than three years.)

(B) *For criminal lunatics.*

If the jury find the prisoner "guilty but insane" the Judge will order him to be detained in a Criminal Lunatic Asylum during His Majesty's pleasure (*o*).

(4a) **Probation** (*p*).

Probation of Offenders Act, 1907.

(1) Where any person is convicted on indictment of any offence punishable with imprisonment, the Court may discharge him upon his entering into a recognisance—
(i) to come up for judgment if called upon during the next 3 years; and
(ii) to be of good behaviour.

(2) The offender may also be placed under the supervision of a probation officer.

Probation Officers.

(a) Certain persons appointed to assist and find employment for offenders who have been placed under their supervision.

(b) They render to the Court from time to time a report of the offender's progress.

(c) By the *Criminal Justice Act, 1925*, certain areas are to be marked out as probation areas and the appointment of probation officers for each area becomes compulsory.

(5) **Whipping.**

(a) On conviction of a male prisoner (*q*) for any of the following offences, the Court may, in addition to the punishment awarded, inflict a whipping :—
(i) Robbery with violence (*r*).

(*o*) *Criminal Lunatics Act, 1884* (47 & 48 Vict. c. 64), ss. 5, 16.
(*p*) The *Criminal Justice Act, 1925*, has considerably developed the probation system, Part I of the Act being devoted entirely to that subject.
(*q*) Whipping may never be inflicted upon a female prisoner.
(*r*) *Garrotters Act, 1863* (26 & 27 Vict. c. 44).

(ii) Being an incorrigible rogue.
(iii) Procuring or living upon the earnings of prostitution (*s*).
(iv) Persistently soliciting for immoral purposes in a public place.
} On a second conviction (*t*).
(v) Attempts to alarm or injure the Sovereign (*u*).

(b) The whipping must take place
(i) Within 6 months from the passing of the sentence.
(ii) In the case of a prisoner sentenced to penal servitude, before he is removed to the convict prison.

(c) The C.C.A. will not hear medical evidence to the effect that the prisoner is unsuitable to be whipped.
R. v. *Dugdale* (*v*).

(d) The number of strokes awarded is not to exceed 50.

(e) A juvenile offender may, in some cases (*w*), be sentenced to receive a number of strokes with a birch rod
(i) If under 14 and sentenced summarily by a J.P., the maximum number of strokes is 6.
(ii) If under 16 and sentenced under 26 & 27 Vict. c. 44 (*ww*), the maximum number of strokes

(6) **Fines.**
Rarely inflicted for serious offences.

(7) **Preventive Detention.**
Prevention of Crime Act, 1908 (*x*).

(a) An habitual criminal may be given, in addition to a sentence of penal servitude, a period of detention of not less than five and not more than ten years (*y*).

(b) *Habitual Criminal.*
Any person who
(i) since he was 16 years old has been at least three times convicted of a crime (not including the one on which he awaits sentence (*z*)) and is leading persistently a dishonest life; *or*

(*s*) *Criminal Law Amendment Act, 1885* (48 & 49 Vict. c. 69), s. 2.
(*t*) 61 & 62 Vict. c. 39.
(*u*) 5 & 6 Vict. c. 51.
(*v*) (1923), 17 C. A. R. 55.
(*w*) *E.g.*, corruptly to take any reward for helping a person to recover stolen property.
(*ww*) The *Garrotters Act, 1863.*
(*x*) 8 Edw. 7, c. 59.
(*y*) This means that if the Judge considers that the primary offence merits a sentence of penal servitude, then and then only may he inflict an additional sentence of preventive detention : in no case must a sentence of penal servitude be inflicted in order to impose preventive detention : *R.* v. *Thos. Henry Harry* (1928), 21 Cr. App. Rep. 22.
(*z*) The primary offence must be one punishable with penal servitude.

(ii) has on a previous occasion been found to be an habitual criminal and been sentenced as such, and *is* (not "*was*") leading persistently a dishonest life (*a*).

(c) The fact that the prisoner has, since his last discharge, done some honest work, is not by itself a reason why the jury should not find him to be an habitual criminal.

R. v. *Hayes* (*b*).

But a direction on the allegation of being an habitual criminal must deal with an interval of honest work.

R. v. *Harry* (*c*).

(d) In order to convict a prisoner of being an habitual criminal it is necessary to prove—

(1) Consent of the Director of Public Prosecutions.

(2) Seven days' notice

(a) To the clerk of the Court by which the accused is to be tried.

(b) To the accused.

(3) Age of the accused.

(4) Three previous convictions since the age of 16, *or* a previous conviction as an habitual criminal.

(5) That the accused is persistently leading a dishonest or criminal life.

(e) No prisoner can be charged solely with being an habitual criminal :—

(1) The charge of being an habitual criminal is always added to an indictment for some other offence (*d*).

(2) Should the prisoner plead guilty to the primary offence and not guilty to being an habitual criminal, he is tried on the charge of being an habitual criminal before sentence.

(3) Should he plead not guilty to the primary offence, then he is tried on that first and

(i) if convicted, he is tried immediately by the same jury on the charge of being an habitual criminal;

(ii) if acquitted, he cannot be tried on the charge of being an habitual criminal.

(4) Should he plead guilty to, or be convicted of, the primary offence, and the jury disagree upon the

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(*a*) *R.* v. *Norman* (1924), 18 Cr. App. R. 81; Wilshere, 395.
(*b*) (1926), 19 Cr. App. R. 157.
(*c*) (1928), 21 Cr. App. R. 21.
(*d*) This offence must be one punishable with penal servitude.

charge of being an habitual criminal, he can be re-tried by a fresh jury on the charge of being an habitual criminal.

(f) The infliction of a sentence of preventive detention is entirely within the discretion of the Judge; therefore even if a prisoner is convicted of being an habitual criminal, the Judge may consider that the case does not merit preventive detention and consequently not inflict any.

Director of Public Prosecutions.

(a) Appointed 1879 (*e*).

(b) Authorised, under the superintendence of the Attorney-General, to institute or carry on criminal proceedings in any Court.

(c) Gives advice and assistance to
  (i) chief officers of police;
  (ii) clerks to justices;
  (iii) other persons concerned in any criminal proceedings.

(d) May intervene in any criminal proceeding actually commenced and take the further conduct of the case out of the hands of the private prosecutor or the police—
  (i) in cases of importance or difficulty;
  (ii) where the refusal or failure of a person to prosecute renders action on his part necessary to secure the due prosecution of an offender.

(e) The Court will take judicial notice of the signature of the Public Prosecutor and of that of the Attorney-General (*f*).

(XII) APPEAL TO THE COURT OF CRIMINAL APPEAL.

(a) Notice of appeal must be given within ten days of conviction.

(b) On the hearing and determination of an appeal, no costs shall be allowed on either side.

(c) Should the appeal be unsuccessful, the sentence will date from the time of the appeal, and not from the time of conviction.

(*e*) *Prosecution of Offences Act* (42 & 43 Vict. c. 22), amended by the *Public Prosecution Act, 1908* (8 Edw. 7, c. 3).

(*f*) *C. J. A., 1925*, s. 34.

(XIII) RESPITE, REPRIEVE OR PARDON.

Respite.

Postponement of sentence until a future date.

This may be done

(1) When an appeal is pending to the C.C.A.

(2) Where the Court desires to defer sentence on account of either

(a) the nature of the offence,

(b) the antecedents or mental or physical condition of the prisoner,

in order that further inquiries may be made.

(3) In cases where the Judge does not desire to send the offender to prison but considers the case too serious to warrant an immediate bind over, he may postpone sentence till next sessions in order to inflict upon the offender the slight punishment of being kept in custody for that period, and at the next sessions the offender will be bound over to come up for judgment if called upon and to be of good behaviour.

Reprieve.

Withdrawal of the sentence.

(1) May be granted by the Crown or by the Court.

(2) Must be granted in two cases—

(i) When a woman sentenced to death is ascertained to be pregnant.

(ii) When the prisoner becomes insane after judgment.

Pardon (*g*).

Granted by the Crown only.

Two unpardonable offences :—

(a) Public nuisance unabated.

(b) Sending a prisoner outside England to evade the writ of Habeas Corpus.

(*g*) If a prisoner be convicted of a crime and sentenced, and it subsequently transpire that he was innocent of the crime of which he was convicted, he receives the King's Pardon.

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